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IN THE  
SUPREME COURT OF THE UNITED STATES

October Term, 1982

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NO.

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FREDERICK C. LANGONE, et al.,  
Appellants,

v.

MICHAEL J. CONNOLLY, et al.,  
Appellees.

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ON APPEAL FROM THE SUPREME JUDICIAL  
COURT FOR THE  
COMMONWEALTH OF MASSACHUSETTS

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JURISDICTIONAL STATEMENT

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### QUESTION PRESENTED

Whether the constitutional right of political association requires a state to enforce a rule of a state political party which differs from the statutory requirements for access to primary ballots?



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ON APPEAL FROM THE SUPREME  
JUDICIAL COURT FOR THE  
COMMONWEALTH OF MASSACHUSETTS

---

JURISDICTIONAL STATEMENT

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The Attorney General of the  
Commonwealth of Massachusetts, acting on  
his own behalf<sup>1/</sup> pursuant to the

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<sup>1/</sup> Frederick C. Langone, Madeline G.  
Sarno, Victor Grillo, Louis Ferretti,  
Gail A. Fasano, The Langone For  
Lieutenant Governor Committee, and Joel  
M. Pressman were additional plaintiffs  
in the state court proceedings. A sepa-

(footnote continued)



provisions of Mass. Gen. Laws c. 12, § 3, files this Jurisdictional Statement seeking plenary review by this Court of final judgment entered by the Supreme Judicial Court for Suffolk County.

OPINION BELOW

The Opinion of the Supreme Judicial Court for the Commonwealth of Massachusetts has not yet been issued and is therefore not reported.<sup>2/</sup> The Supreme

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(footnote continued)

rate Jurisdictional Statement is being filed on behalf of those plaintiffs with the exception of Joel Pressman. The Defendants were the Secretary of the Commonwealth, Michael J. Connolly, and the Democratic State Committee, and four candidates for lieutenant governor: Evelyn F. Murphy, Samuel Rotondi, John F. Kerry and Lois E. Pines.

2/ The Supreme Judicial Court has issued a related opinion which presented a question similar to that presented here. See Opinion of the Justices, 385 Mass. 1201 (1982). The advisory opinion was advisory in nature, it is not binding authority, Lincoln v. Secretary

(footnote continued)

Judicial Court's response to the questions reserved and reported by a Single Justice of the court is reproduced in the Appendix A. (1A-4A) The Reservation and Report is also reproduced as Appendix B. (5A-7A) Finally, the Judgment entered by the Single Justice is set forth in Appendix C. (8A-10A)

#### JURISDICTION

Because the Opinion or Opinions of the state's highest court have not yet been issued, it is not possible for the Attorney General to specify the jurisdictional basis for this appeal. The Supreme Judicial Court may have upheld

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(footnote continued)

of the Commonwealth, 326 N.E.2d 313, 314, 93 N.E.2d 744, 745 (1950), and the pending legislation which was the subject of the advisory opinion was never enacted into law.

the constitutionality of the Massachusetts statutory scheme for obtaining access to state primary ballots in light of a challenge that the statutes are repugnant to the Constitution of the United States. The jurisdiction of this Court would therefore be conferred by 28 U.S.C. § 1257(2). First National Bank v. Bellotti, 435 U.S. 765 (1978); Commonwealth Bank v. Griffith, 39 U.S. 56 (1840).

The Supreme Judicial Court may also have held that the Massachusetts statutory scheme fails to protect the political associational rights of the members of the state Democratic party and is therefore repugnant to the Constitution of the United States. In that event, the Appellant respectfully requests that this pleading be treated as a Petition for Writ of Certiorari.

If the statutory scheme has been held to be unconstitutional, the jurisdiction of this Court would be conferred by 28 U.S.C. § 1257(3). New York State Liquor Authority v. Bellanca, 452 U.S. 714 (1981); Minnesota v. Clover Leaf Creamery Company, 445 U.S. 949 (1980).

Because of the Attorney General's uncertainty concerning the basis of the decision of the Court below, he expressly requests the opportunity to supplement this Statement within thirty days from the date the Opinion or Opinions of the Supreme Judicial Court are issued.

#### STATUTES INVOLVED

This litigation involves the entire state statutory scheme by which candidates are nominated for state office at political primaries. Of particular and direct relevance is the

statute that governs the means by which candidates may have their names placed upon the state primary ballots. Mass. Gen. Laws c. 53, § 44. The full text of this statute is as follows:

The nomination of candidates for nomination at state primaries shall be by nomination papers. In the case of the governor, lieutenant governor, attorney general and United States senator, nomination papers shall be signed in the aggregate by at least ten thousand voters; in the case of the state secretary, state treasurer and state auditor, they shall be signed by at least five thousand voters. Such papers for all other offices to be filled at a state election shall be signed by a number of voters as follows: for representative in congress, two thousand voters; for councillor, district attorney, clerk of courts, register of probate, register of deeds, county commissioner, sheriff and county treasurer, one thousand voters, except that in Barnstable, Berkshire, Franklin, and Hampshire counties such papers for nomination to the office of clerk of courts, register of probate, register of deeds, county commissioner, sheriff and county treasurer shall be signed by five hundred voters; for state senator, three hundred voters; for representative in the

general court and commissioners to apportion Suffolk county, one hundred and fifty voters. If ten per cent of the number of voters in the respective district who are enrolled in the party whose nomination the candidate seeks is a lesser number than the number otherwise required by the preceding sentence, then the number of voters required shall be such ten per cent or shall be fifty per cent of the number of voters otherwise required by the preceding sentence, whichever is greater. The total number of such enrolled voters shall be determined from the records in the office of the state secretary. In Dukes and Nantucket counties such papers for nomination to all offices within the county to be filled at any state election shall be signed by twenty-five voters.

#### STATEMENT OF THE CASE

This action was initiated by a candidate for the nomination of the Massachusetts Democratic party for the office of Lieutenant-Governor. The action was brought to challenge the decision of the Secretary of the Commonwealth to enforce a rule of the Massachusetts Democratic party. The

rule excluded from the state Democratic primary ballot any candidate who had not obtained at least 15% of the votes cast at the Democratic party's nominating convention.<sup>3/</sup> The plaintiff candidate failed to receive the necessary 15% of the votes of the nominating convention. He did, however satisfy all of the statutory requirements for having his

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<sup>3/</sup> Article Six, Section III of the Charter of the State Democratic Party, in its entirety, states:

There shall be a State Convention in even-numbered years for the purpose of endorsing candidates for statewide offices in those years in which such office is to be filled. Endorsements for statewide office of enrolled Democrats nominated at the Convention shall be by majority vote of the delegates present and voting, with the provision that any nominee who receives at least 15 percent of the Convention vote on any ballot for a particular office may challenge the Convention endorsement in a State Primary Election.



name placed on the state Democratic primary ballot.<sup>4/</sup>

The Attorney General intervened as a plaintiff with a separate complaint in the nature of mandamus, seeking to compel the Secretary to place on the state Democratic primary ballot all candidates who satisfied the applicable statutory requirements, notwithstanding the rule of the state Democratic party requiring candidates to obtain 15% of the convention vote.

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<sup>4/</sup> The statutorily imposed requirements are filing at least 10,000 certified signatures of Democratic or independent voters, Mass. Gen. Laws c. 53, §§ 44 and 46, filing an acceptance of the nomination, Mass. Gen. Laws c. 53, §§ 9 and 45, filing a certificate of party registration, Mass. Gen. Laws c. 53, § 48, and filing a receipt indicating that the candidate has filed a financial disclosure statement with the State Ethics Commission. Mass. Gen. Laws c. 53, § 9.



Upon petition of the parties, the case was transferred from the Superior Court to the Supreme Judicial Court for Suffolk County pursuant to Mass. Gen. Laws c. 211, § 4A. (App. 11A-16A) The parties then entered into a comprehensive Statement of Agreed Facts, and upon motion, a Single Justice reserved and reported the matter to the full court for disposition. (App. 5A-7A)

Following the simultaneous submission of briefs and after oral argument, the Supreme Judicial Court issued an order upholding the Secretary's decision and actions the Court indicated that its Opinion or Opinions would follow. (App. 1A-3A) The next day the Single Justice issued Judgment in accordance with the Order of the full court. (App. 8A-10A) Langone and the Attorney General each filed

separate notices of appeal. (App. 19A-21A) Because the Opinion or Opinions of the Supreme Judicial Court had not been issued on September 27, 1982, Justice Brennan granted the Appellant a sixty day extension of time to docket his appeal or to petition for a writ or certiorari. No further extension of time is possible. 28 U.S.C. § 2101(c).

#### THE QUESTION IS SUBSTANTIAL

- I. This Case Presents A Novel And Important Question Arising Under The First and Fourteenth Amendments, Concerning The Respective Roles of State Statutes And Party/Rules In Establishing Qualifications For Access To Primary Election Ballots.

This case concerns the state's authority to regulate primary elections. The question raised was left unanswered by this Court in Cousins v. Wigoda, 419 U.S. 477 (1975), and Democratic Party of the United States of

America v. Wisconsin, 450 U.S. 107 (1981). In these cases, the Courts determined that the political associational rights of national political parties enabled the parties to decide who may take part in the National Nominating Conventions. The Court did not, however, address the question of conflict between state law and state party rules concerning state conventions and primaries, nor conclude that the associational rights of the political party predominate.<sup>5/</sup>

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<sup>5/</sup> "[T]his case intimates no views regarding other efforts to regulate party conventions. Congressional regulation of national conventions or state regulation of state primaries or conventions for state offices raises different consideration requiring a wholly different balance." Cousin v. Wigoda, 419 U.S. at 497, n. , (Powell, J. concurring in part and dissenting in part).

The Supreme Judicial Court has added a new dimension to the constitutional right of political association. Unlike the party rules at issue in Wigoda and Wisconsin, this case does not involve a restriction on the participants in a national party convention. Rather, it concerns the question of who should control access to the state primary ballot: the party or the state legislature. The Supreme Judicial Court has seemingly recognized the absolute right of the party to dictate the qualifications for access to the primary ballot, and thereby grant to the party regulars complete dominium over the selection process.<sup>6/</sup>

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<sup>6/</sup> The Attorney General recognizes the legislature's right to authorize by statute the political parties right to make this determination. See Yuratic

(footnote continued)

This case deserves plenary consideration because this issue is of substantial importance to every state which has adopted the primary system as the means by which political parties choose their nominees.<sup>7/</sup> The challenged decision can permit the virtual nullification of the primary process; if the parties have the absolute right to set minimum ballot access qualifications, then a state may not be able to retain control of the

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(footnote continued)

v. Plaquemines Parish Democratic Executive Committee, 32 So.2d 647 (La. 1947). In this case, the Massachusetts Legislature has retained for itself the determination of which candidates may be placed on primary ballots.

<sup>7/</sup> Critical as the issue may be elsewhere in the United States, it is of paramount importance in Massachusetts where the Democratic nominees have been elected to every state-wide office since 1970.

political process to ensure an open and fair selection of party candidates. Since the primary election system was designed to free the nomination process from domination by party bosses and to eradicate the abuses inherent in conventions and caucuses, elevating the rights of party regulars and enforcing a 15% convention rule strikes at the very heart of primary elections.

II. The Decision Below Conflicts With The Decisions Of Other Federal And State Courts In Its Holding That A Political Party May Cause To Be Excluded From The Primary Ballot A Candidate For Nomination Who Has Met All Statutorily Imposed Requirements For Ballot Access.

Based upon its apparent misreading of this Court's precedents, the Supreme Judicial Court has reversed a traditional approach used by Courts to resolve conflicts between state law and party rules. In doing so, the Supreme Judicial Court has created a conflict



between itself and other state and federal courts. When a political party's rule conflicts with state law, courts have historically struck down the rule as unenforceable. Thus, in Dunshie v. Fields, 115 So. 45 (La. 1927), the Supreme Court of Louisiana held that where a state statute set a deadline for candidates to file their notice of intention, the party lacked the discretion or the authority to extend the deadline.

Similarly, the Supreme Court of Texas in Love v. Wilcox, 28 S.W.2d 515 (Tex. 1930), held that a political party could not impose a more restrictive loyalty requirement on candidates seeking access to the party's primary ballot than was imposed by state statute. The Texas Supreme Court later followed this decision stating, "The

committee is utterly wanting in authority to subtract from or add to the words of the statutory pledge . . . ."

Friberg v. Scurry, 33 S.W.2d 762, 766 (Tex. 1930); see also Clancy v. Clough, 30 S.W.2d 569 (Tex. 1928).

Where state statutes set out the requirements for access to primary ballots, the courts of various jurisdictions have universally refused to give affect to party rules which unilaterally establish different or more stringent requirements. Stock v. Harris, 193 Ark. 114, 97 S.W.2d 920 (Ark. 1936)(payment of ballot fees required by party rule but not by state statute); Stevenson v. Sherman, 231 S.W.2d 506 (Tex. 1950)(payment of fees by candidates to the political party required by the party in excess of those imposed by statute); Hammer v. Curran,



118 N.Y.S.2d 268, 273 (N.Y. 1952)(more stringent residence requirement imposed by party rule than by state law); Lasseigne v. Martin, 202 So.2d 250, 257 (La. 1967)(imposition of financial obligation by party rule in excess of that required by statute). See also, Winn v. Wooten, 196 Ark. 737, 119 S.W.2d 540, 541 (Ark. 1938)(" . . . while the Democratic organization has a right to construe its rules and enforce them without interference from the court, yet, where a rule of any party is in conflict with any statute, such rule is void.")<sup>8/</sup>

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<sup>8/</sup> Although these cases largely predate this Court's decisions in Cousins and Wisconsin, the fact that the cases decided by this Court dealt with seating delegates to a national convention leaves the reasoning of the state courts intact. See supra at pp. for a fuller discussion of the Cousins and Wisconsin decisions.

The Supreme Court of Louisiana has upheld and enforced a political party's nomination rule which was in excess of the requirements expressly set by statute. Yuratich v. Plaquemines Parish Democratic Executive Committee, 32 So.2d 647 (La. 1947). In that case, however, the Court based its decision upon an express statutory provision that allowed the party "to prescribe 'further qualifications' than those required 'by the Constitution and election laws.'" Id. at 650.

Similarly, in 1970, the United States District Court for the District of Connecticut upheld a requirement imposed by state statute that required prospective candidates to receive at least 20% of the delegate votes in a district nominating convention. Tansley v. Grasso, 315 F.Supp. 513 (D. Conn.

1970). This decision rested upon the constitutionality of the statutory condition for ballot access and did not concern the question of whether the party itself could have imposed such a requirement absent express statutory authorization. Thus, even those cases which recognize a continuing role for political parties in establishing qualifications for nomination start from the premise that regulating the manner and method of nomination is controlled by state statutory provisions. The decision of the Supreme Judicial Court, which apparently subjugates the mandatory terms of state law to the will of party regulars, is therefore in conflict even with this narrow category of cases.

III.      The Decision Below Misapplies  
The Prior Decisions Of This  
Court By Creating A Hierarchy  
Of Associational Rights Provid-  
ing Superior Rights To Party  
Regulars Than To Other Party  
Members.

In attacking an opinion which has not been issued, the Attorney General makes no claim of prescience. The Justices of the Supreme Judicial Court issued an advisory opinion to the Governor of Massachusetts earlier this year on a related subject, Opinion of the Justices, 385 Mass. 1201 (1982), and for purposes of this submission the Attorney General assumes that the logic of the advisory opinion will be reflected in the decision in this case. In that Opinion, the Justices considered a pending amendment to Mass. Gen. Laws c. 53, § 44, which would have expressly provided that candidates filing the required number of signatures of qualified voters were to be

placed on the primary ballot notwithstanding any contrary rule adopted by a political party.<sup>9/</sup> The Justices opined that the proposed law would violate the constitutional right of association held by the political party and its members. The Justices reasoned that because independent voters, could sign nomination petitions of candidates seeking access to the party's primary ballot, and because voters could both enroll and vote in the Democratic party on primary day, that by precluding the state's enforcement of the party's 15% rule, the proposed statute would violate the political associational rights of "party regulars" to have an effective role in choosing the party's nominee. Opinion of the Justices, 385 Mass. 1205. The Attorney General assumes

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<sup>9/</sup> This proposal was not enacted into law.

that the decision of the Supreme Judicial Court is based upon the reasoning expressed in this earlier Opinion of the Justices. Yet, there are significant errors of law that undermine the reasoning employed by the Justices.

First, the Court erroneously assumed that "party regulars" have a greater right to determine who the party's nominees will be than party irregulars, or party insurgents or new party members. The basis of the Opinion of the Justices, was that the "party regulars" should be able to require the state to enforce a party rule that provides them with greater control over the nominating process. In the absence of any statutory provision, this reasoning necessarily elevates the political associational rights of party

regulars above the rights of all other party members. There is simply no support for this proposition in the Constitution of the United States or in any decision rendered by this Court. By enacting statutes providing for primary elections and by providing that independent voters may join the party and vote on primary day, the Massachusetts legislature was clearly attempting to open the nominating process to all members of the Democratic party. This legislation was designed to enhance the associational freedoms of party members by removing the control of party regulars and party bosses from the nominating process. The decision of the Supreme Judicial Court directly undermines the validity of that statutory determination.



Second, the Court incorrectly stated that non-party members could vote in the state Democratic primary.<sup>10/</sup> Only individuals who openly and publicly declare their association with the Democratic party and who have that association publicly recorded are entitled to vote in the state Democratic primary. These express statutory requirements<sup>11/</sup> conclusively demonstrate

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<sup>10/</sup> "Voting in party primaries is limited to enrolled party members and unenrolled voters who enroll at the polls just before receiving ballots. Mass. Gen. Laws c. 53, § 37." Opinion of the Justices, 385 Mass. at 1205. (Emphasis in original.)

<sup>11/</sup> Individuals may enroll in the Democratic party either by indicating that intent when they register to vote, Mass. Gen. Laws c. 51, § 44, or by requesting the board of registrars where they vote to place them on the rolls of the party, Mass. Gen. Laws c. 53, § 38, or by enrolling in the party at the polling place on primary day. Mass. Gen. Laws c. 53, § 37.



that Massachusetts employs a direct "closed" primary as opposed to the "open" primary used in some states. See LaFollette v. Democratic Party, 287 N.W.2d 519, 523 (1980), rev. on other grounds, sub. nom. Democratic Party of the United States v. Wisconsin, 450 U.S. 107 (1981). Therefore, only members of the Democratic party may vote in the party's primary and only party members have any influence on the selection of the party's nominees. The Massachusetts statutory scheme simply does not impose a durational membership requirement prior to participation in the primary process.<sup>12/</sup>

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<sup>12/</sup> It should be emphasized that a member of another political party can not enroll and vote in the Democratic primary on the day of the primary. The Massachusetts statutory scheme provides that a change in party enrollment does not become effective for twenty-eight days. Mass. Gen. Laws c. 53, § 38.

IV. The Decision Below Removes The Ability Of The States To Control An Integral Part Of The Election Process.

By elevating the right of the state political party to compel the state to enforce party rules governing access to primary ballots, the Supreme Judicial Court decision can permit the circumvention of the entire primary process.

The right of the state to require that political parties nominate their candidates by primary elections is well-established. "It is too plain for argument . . . that the state may limit each party to one candidate for each office on the ballot and may insist that intraparty competition be settled before the general election by primary election or by party convention." (citation omitted) American Party of Texas v.

White, 415 U.S. 767, 781 (1974). The right to have the party's nominee selected at a primary election, conducted at state expense, is a right created, defined and limited by statute. See Smith v. Allwright, 321 U.S. 649 (1944).

In Massachusetts, prior legislation provided an express role for nominating conventions. See 1932 Mass. Acts c. 310; 1953 Mass. Acts c. 406; 1966 Mass. Acts c. 56, § 2. In 1973 these statutory provisions were repealed in favor of the primary election as the sole mechanism for selecting the parties' nominees for state-wide office. 1973 Mass. Acts c. 429 The nominating convention held in 1982 by the state Democratic party was not statutorily required or regulated. It was purely a creation of

the members of the Democratic party.<sup>13/</sup>

The anticipated decision of the Supreme Judicial Court will necessarily mean that rules adopted by political organizations must be given effect by the state, even in the absence of any statutory authorization. The Court has apparently rested its decision on the associational rights of the party regulars. If such a constitutional right exists, that is, the right to establish qualifications for access to the state primary ballots, then the

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<sup>13/</sup> The Attorney General does not challenge the right of the members of the party to hold such a convention. Nor does he suggest that the party could not adopt and internally enforce a 15% rule. The Attorney General merely asserts that the party can not require the state to enforce a party rule, absent express legislative authorization. Compare, Tansley v. Grasso, 315 F.Supp. 513 (D. Conn. 1970).

party regulars have the right to circumvent the statutes requiring parties to select their nominees by primary elections. If the party regulars have the constitutional right to require the state to enforce a 15% rule, they would likewise have the right to require the state to enforce a 35% rule or a 50% rule.<sup>14/</sup> By the uncritical acceptance of such rules, the Supreme Judicial Court has reduced the primary election to a hollow exercise of affirming the endorsement of the party regulars. It is precisely this type of dominance by party regulars that led to the progressive reforms adopted throughout the country at the turn of the

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<sup>14/</sup> If a 35% rule had been in place in 1982, the incumbent Governor would have been denied ballot access and only one candidate for the Office of Governor could have been placed upon the Democratic primary ballot.

century, and specifically to the institution of primary elections. See Democratic Party of the United States v. Wisconsin, 450 U.S. at 136-7, n.13 (Powell, J. dissenting).

The question presented by this appeal is substantial as it directly implicates the continued vitality of the primary election process. The Supreme Judicial Court's decision will necessarily, perhaps automatically, divest the state of significant control of what has been described as an "integral part" of the election process. United States v. Classic, 313 U.S. 299, 314 (1941).

#### Conclusion


The question presented by this Statement is substantial. The Appellant urges this Court to grant his accompanying Motion and delay consideration of




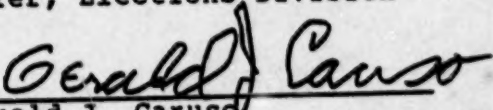
the Statement until the Opinion or  
Opinions of the Supreme Judicial Court  
have been issued and supplementary  
pleadings have been filed. In the  
alternative, the Appellant urges this  
Court to note probable jurisdiction and  
set the case down for argument.

Respectfully submitted,

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DATED: December 1, 1982



APPENDIX A  
COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT  
FOR THE COMMONWEALTH

SJC-2889

At Boston

July 6, 1982

Frederick C. Langone, et al.

vs.

Secretary of the Commonwealth,  
et al.

Order

On June 18, 1982, the Single Justice reserved and reported the following questions of law presented by this action: "1. Whether all candidates who have complied with applicable statutory requirements must appear upon the Democratic state primary ballots, notwithstanding the failure to obtain at

least fifteen percent of the vote on any ballot of the Democratic Convention pursuant to Article Six, Section III of the 'Charter of the Democratic Party of the Commonwealth'? 2. Whether the decision by the Secretary of the Commonwealth that he will not place upon the Democratic state primary ballots those candidates who failed to obtain at least fifteen percent of the vote on any ballot of the Democratic Convention pursuant to Article Six, Section III of the 'Charter of the Democratic Party of the Commonwealth', but otherwise complied with the statutory requirements to have their names placed upon the ballots violated the constitutional or statutory rights of the voters, the candidate, or their supporters?"

Upon consideration of the argument and briefs of the parties, we interpret

the State statutes in light of the State and Federal constitutions and rule that the Secretary must give effect to the relevant charter provision. Accordingly, we answer the questions reported, "no."

A rescript will issue forthwith with an opinion or opinions to follow:

By the Court,

/s/  
Frederick J. Quinlan  
Assistant Clerk

Entered: July 6, 1982

COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT  
FOR THE COMMONWEALTH

In the Case

At Boston,

No. SJC-2889

July 6, 1982

Frederick C. Langone, & others

vs.

Secretary of the Commonwealth  
& others

pending in the Supreme Judicial Court  
for the County of Suffolk, No.  
82-214-Civ.

ORDERED, that the following entry be  
made in the docket; viz., --

The reported questions are answered  
"No."

By the Court,

/s/  
Frederick J. Quinlan  
Assistant Clerk

July 6, 1982

APPENDIX B

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT  
NO. 82-214-Civil

---

FREDERICK C. LANGONE, et al.,  
Plaintiffs,  
v.  
MICHAEL J. CONNOLLY, et al.,  
Defendants.

---

RESERVATION AND REPORT

I reserve and report to the Supreme Judicial Court for the Commonwealth the following questions of law presented by the above-entitled action:

1. Whether all candidates who have complied with applicable statutory requirements must appear upon the Democratic state primary ballots, notwithstanding the failure to obtain at least fifteen percent of the vote on any

ballot of the Democratic Convention pursuant to Article Six, Section III of the "Charter of the Democratic Party of the Commonwealth"?

2. Whether the decision by the Secretary of the Commonwealth that he will not place upon the Democratic state primary ballots those candidates who failed to obtain at least fifteen percent of the vote on any ballot of the Democratic Convention pursuant to Article Six, Section III of the "Charter of the Democratic Party of the Commonwealth", but otherwise complied with the statutory requirements to have their names placed upon the ballots violated the constitutional or statutory rights of the voters, the candidate, or their supporters?

The foregoing questions of law are served and reported upon the Complaint,

the Complaint of the Attorney General, the Answer and Counterclaim of the Secretary, and the Statement of Agreed Facts executed by the parties, including attachments annexed. The following schedule will be observed by the parties:

(1) The briefs of each party will be filed on June 25, 1982.

(2) The matter is set down for hearing by the full court on June 29, 1982.

/s/  
Associate Justice

DATED: June 18, 1982

A true copy,

Attest:

/s/  
Clerk

June 22, 1982



APPENDIX C

COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT  
FOR SUFFOLK COUNTY

---

FREDERICK C. LANGONE, et al.,

Plaintiffs,

v.

MICHAEL J. CONNOLLY, et al.,

Defendants.

---

JUDGMENT

This matter came on before the Court, O'Connor, J., presiding, on the rescript issued by the Supreme Judicial Court for the Commonwealth and entered in this Court,

It is Ordered and Adjudged as follows:

1. Candidates who have complied with applicable statutory requirements need not appear upon the Democratic state primary ballots if they failed to

obtain at least fifteen percent of the vote on any ballot of the Democratic Convention pursuant to Article Six, Section III of the 'Charter of the Democratic Party of the Commonwealth.'

2. The decision by the Secretary of the Commonwealth that he will not place upon the Democratic state primary ballots those candidates who failed to obtain at least fifteen percent of the vote on any ballot of the Democratic Convention pursuant to Article Six, Section III of the 'Charter of the Democratic Party of the Commonwealth,' but otherwise complied with the statutory requirements to have their names placed upon the ballots did not violate the constitutional or statutory rights of the voters, the candidates, or their supporters.

Dated at Boston, Massachusetts this

7th day of July, 1982.

/s/

John E. Powers  
Clerk of Court

A true copy,

Attest: John E. Powers,  
Clerk

Dated: 7/7/82

APPENDIX D

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS. SUPREME JUDICIAL COURT  
NO. 82-214-Civil

---

FREDERICK C. LANGONE, et al.,

Plaintiffs,

FRANCIS X. BELLOTTI, as he is the  
Attorney General of the Commonwealth  
of Massachusetts,

Plaintiff-  
Intervenor

v.

MICHAEL J. CONNOLLY, as he is the  
Secretary of the Commonwealth of  
Massachusetts, et al.,

Defendants.

---

PETITION FOR TRANSFER

Pursuant to G.L. c. 211, § 4A, the undersigned parties to the above-captioned action pending in the Superior Court Department for Suffolk County (Civil Action No. 55255) petition for the transfer of the action to this

Court and state the following reasons:

1. The complaints in this action present the question of whether candidates for nomination to statewide office must be placed on the ballot of a state primary for the Democratic Party upon compliance with all statutory requirements for nomination despite the failure to receive fifteen percent of the vote of the party convention as arguably required by Article Six, Section III of the "Charter of the Democratic Party of the Commonwealth."

2. The Justices of the Supreme Judicial Court referred to and discussed Article Six, Section III of the "Charter of the Democratic Party of the Commonwealth" ("fifteen percent rule") in its Opinion of the Justices, 385 Mass. 1201 (1982).

All parties hereto pray that this

Court declare the rights, duties, status and other legal relations of all parties hereto under the "fifteen percent rule" and G.L. c. 52, and 53.

3. In reliance upon said Article Six, Section III and said Opinion of the Justices, the Secretary of State of the Commonwealth decided not to place upon the state primary ballot of the Democratic Party those candidates who did not receive fifteen percent of the convention vote. Plaintiffs in the above-captioned action were each notified by the Director of Elections, by separate letters dated May 26, 1982, that their names would not be placed on the Democratic state primary ballots. This action was commenced in the Superior Court Department against the Secretary of State bringing into issue the validity and enforcement of the

"fifteen percent rule". All parties necessary for the entry of a declaratory judgment to resolve these issues have been joined in this action.

4. The Attorney General of Massachusetts has declined to represent the Secretary of State in this action, and has intervened as a party plaintiff to obtain, in an adversarial context with an appropriate record, a judicial determination of the validity and enforcement of the "fifteen percent rule". (A photostatic copy of the pleadings filed to date in this action are attached hereto.)

5. An actual controversy has arisen and presently exists among all parties hereto concerning the "fifteen percent rule" and the preparation and provision of the Democratic state primary ballots by the Secretary of State.



6. A prompt declaration of the rights, duties, status and other legal relations of all parties hereto is necessary to prevent voter confusion, to avoid unnecessary interference with the campaigns of the Democratic party candidates, and to allow adequate time to print (and to mail to absentee voters) ballots for the Democratic party state primary. Said ballots must be prepared on or before July 9, 1982.

Accordingly, the transfer of this action, in anticipation of the reservation and report to the Supreme Judicial Court, and an order requiring the completion of the pleadings and the submission of a Statement of Agreed Facts on or before June 16, 1982 is appropriate.

Thereupon, the reservation and report of this action to the Supreme

Judicial Court and a simultaneous filing of briefs on or before June 25, 1982, will facilitate and expedite a prompt judicial resolution.

The parties agree to expedite discovery should that necessity occur.

MICHAEL J. CONNOLLY, AS HE IS  
SECRETARY OF STATE OF THE  
COMMONWEALTH OF MASSACHUSETTS,

By his attorneys,

/s/  
Samuel Hoar, Esq.  
Paul F. McDonough, Esq.  
John Kenneth Felter, Esq.  
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24th Floor  
Boston, MA 02109  
(617) 523-5700

DEMOCRATIC STATE COMMITTEE

By its attorneys,

/s/  
James Roosevelt, Jr., Esq.  
James H. Wexler, Esq.  
HERRICK & SMITH  
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Boston, MA 02110  
(617) 357-9000

SAMUEL ROTONDI

By his attorneys,

/s/

George E. Foote, Esq.  
15 Muzzey Street  
Lexington, MA 02173  
(617) 863-1106

FREDERICK C. LANGONE, ET AL.,

By their attorneys,

/s/

Thomas D. Burns, Esq.  
James F. Kavanaugh, Jr., Esq.  
John J. McGivney, Esq.  
BURNS & LEVINSON  
50 Milk Street  
Boston, MA 02109  
(617) 451-3300

FRANCIS X. BELLOTTI, AS HE IS  
THE ATTORNEY GENERAL OF THE  
COMMONWEALTH OF MASSACHUSETTS,

/s/

Alexander G. Gray, Jr., Esq.  
Chief, Elections Division

/s/

E. Michael Sloman,  
Chief, Governmental Bureau  
Assistant Attorneys General  
One Ashburton Place  
20th Floor  
Boston, MA 02108  
(617) 727-4538  
(617) 727-1020

JOEL M. PRESSMAN

By his attorney,

/s/  
David Berman, Esq.  
100 George P. Hasset Drive  
Medford, MA 02155  
(617) 395-7520

Dated: June 10, 1982

A true copy.

Attest: /s/  
John E. Powers  
Clerk

June 22, 1982

APPENDIX E

COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT  
FOR SUFFOLK COUNTY

---

FREDERICK C. LANGONE, et al.,	)
	)
Plaintiffs, Appellants,	)
	)
v.	)
	)
MICHAEL J. CONNOLLY, et al.,	)
	)
Defendants, Appellees.	)

---

NOTICE OF APPEAL TO THE  
SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Francis X. Bellotti, Attorney General of the Commonwealth of Massachusetts, hereby appeals to the Supreme Court of the United States, or intends to seek review in that Court by way of a petition for a writ of certiorari from the final judgment of the Supreme Judicial Court of Suffolk County entered in this action on July 7, 1982.

Because the opinion or opinions in this matter from the Supreme Judicial Court for the Commonwealth are not yet available, the Attorney General cannot determine whether review will be sought by appeal or by petition for certiorari. It is unclear whether the Massachusetts statutory scheme has been upheld or declared unconstitutional as repugnant to the Constitution of the United States.

This appeal is therefore taken pursuant to 28 U.S.C. § 1257(2) or (3).

FRANCIS X. BELLOTTI  
ATTORNEY GENERAL

/s/  
Thomas R. Kiley  
First Assistant Attorney General

/s/  
Alexander G. Gray, Jr.  
Assistant Attorney General  
Chief, Elections Division  
One Ashburton Place, Room 2001  
Boston, MA 02108  
Telephone: (617) 727-4538

DATE: September 21, 1982

APPENDIX F

COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT  
FOR SUFFOLK COUNTY

NO. 82-214-Civil

---

FREDERICK C. LANGONE, MADELINE G. )  
SARNO, VICTOR GRILLO, LOUIS FERRETTI, )  
GAIL A. FASANO, THE LANGONE FOR )  
LIEUTENANT GOVERNOR COMMITTEE, )  
FRANCIS X. BELLOTTI, as he is the )  
Attorney General of the Commonwealth )  
and JOEL PRESSMAN, )

Plaintiffs/Appellants, )

v. )

MICHAEL J. CONNOLLY, as he is the )  
Secretary of the Commonwealth of )  
Massachusetts, DEMOCRATIC STATE )  
COMMITTEE, SAMUEL ROTONDI, JOHN F. )  
KERRY, LOIS PINES, and EVELYN MURPHY, )

Defendants/Appellees. )

---

NOTICE OF APPEAL TO THE SUPREME COURT  
OF THE UNITED STATES

Notice is hereby given that  
Frederick C. Langone, Madeline G. Sarno,  
Victor Grillo, Louis Ferretti, Gail A.  
Fasano and The Langone for Lieutenant



Governor Committee, plaintiffs/appellants in the above-entitled action, hereby appeal to the Supreme Court of the United States from the final judgment declaring the rights of the parties entered in the Supreme Judicial Court for Suffolk County on July 7, 1982. This appeal is taken pursuant to 28 U.S.C. § 1257(2). Alternatively, depending upon the precise position taken by the Supreme Judicial Court for the Commonwealth in the opinion to be issued in support of the July 7, 1982, Judgment, review by the Supreme Court of the United States may be sought by writ of certiorari pursuant to 28 U.S.C. § 1257(3).

/s/

---

Thomas D. Burns  
James F. Kavanaugh, Jr.  
John J. McGivney  
Attorney for Plaintiffs

Frederick C. Langone,  
Madeline G. Sarno,  
Victor Grillo, Louis  
Ferretti, Gail A.  
Fasano, and The Langone  
for Lieutenant Governor  
Committee

BURNS & LEVINSON  
50 Milk Street  
Boston, MA 02109  
(617) 451-3300

September 23, 1982

Office-Supreme Court, U.S.  
FILED

MAR 17 1983

ALEXANDER L. STEVAS,  
CLERK

NO. 82-927

IN THE  
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

---

FRANCIS X. BELLOTTI,  
ATTORNEY GENERAL, et al.,

Appellants,

v.

MICHAEL J. CONNOLLY, et al.,

Appellees.

---

SUPPLEMENTAL JURISDICTIONAL  
STATEMENT OR PETITION  
FOR CERTIORARI

---

Francis X. Bellotti,  
Attorney General

Thomas R. Kiley,  
First Assistant  
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Attorneys for Intervenor-  
Appellant

### QUESTION PRESENTED

The sole new issue presented by this Supplemental Jurisdictional Statement as a result of the recently issued opinion of the Massachusetts Supreme Judicial Court is:

Whether this Court may review a decision of the highest court of a state concerning the proper construction of state statutes where that construction is predicated entirely on an erroneous view of federal constitutional requirements.

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NO. 82-927

IN THE  
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

---

FRANCIS X. BELLOTTI,  
ATTORNEY GENERAL, et al.,

Appellants,

v.

MICHAEL J. CONNOLLY, et al.,

Appellees.

---

SUPPLEMENTAL JURISDICTIONAL  
STATEMENT OR PETITION  
FOR CERTIORARI

---

On December 3, 1982, the Attorney General of the Commonwealth of Massachusetts (the Attorney General) filed a Jurisdictional Statement seeking review of a final judgment entered by the Supreme Judicial Court of Massachu-

setts in this case. At the time the Attorney General filed his Jurisdictional Statement, the Supreme Judicial Court had not rendered a written opinion explaining its action. Accordingly, the Attorney General simultaneously filed a motion to defer consideration and requested leave to file a supplement to the Jurisdictional Statement within thirty days after the issuance of the Supreme Judicial Court Opinion.

The opinion was issued on February 16, 1983 and the Attorney General now submits this Supplement to augment his prior Jurisdictional Statement. He continues to rely on that earlier pleading and offers this Supplement only to address those issues raised by the written opinion of the Supreme Judicial Court that could not have been addressed at an earlier time.

### OPINION BELOW

On February 16, 1983, the Supreme Judicial Court issued its opinion. The opinion is reported at 388 Mass. 185 and is also reproduced in the Appendix at the end of this brief.

### JURISDICTION

The Massachusetts Supreme Judicial Court upheld the constitutionality of the Massachusetts statutory scheme for obtaining access to the state primary ballot in light of a challenge that the statutes, as enforced by the Massachusetts State Secretary, violated the United States constitution. Although the Attorney General did not rest his challenge to the Secretary's action specifically on these grounds, he nevertheless invokes this Court's appellate

jurisdiction under 28 U.S.C. §1257(2). The co-plaintiffs who specifically raised federal constitutional issues below have also appealed from the Supreme Judicial Court's decision, Langone v. Connolly, No. 82-936. Their appeal, docketed December 6, 1983, 51 U.S.L.W. 3470, likewise invokes this Court's appellate jurisdiction. The Attorney General requests that his Jurisdictional Statement be treated in conjunction with the co-appellants' Statement.

To the extent that the Court finds that the Attorney General's appeal under 28 U.S.C. §1257(2) is improper, he respectfully requests, pursuant to 28 U.S.C. §2103, that his Jurisdictional Statement and his Supplemental Jurisdictional Statement be treated as a Petition For Certiorari under 28 U.S.C. §1257(3).

**THIS CASE RAISES AN IMPORTANT FEDERAL QUESTION WHICH DESERVES PLENARY CONSIDERATION BY THIS COURT.**

- I. Because The Supreme Judicial Court Felt Compelled By The Federal Constitution To Rule As It Did, This Case Presents A Federal Question Within This Court's Jurisdiction.

This case presents a conflict between the right of the state to control the conduct of primary elections and the right of members of a state political party to associate for political purposes. The Massachusetts Supreme Judicial Court attempted to resolve the conflict by engaging in a simple exercise in statutory construction of the state election laws. Those laws set forth specific prerequisites for gaining access to the primary ballot, but do not explicitly provide for the enforcement of a



newly-adopted rule of the State Democratic Party which requires candidates to first obtain 15% of the party's convention vote before obtaining a place on the state primary ballot.

The Supreme Judicial Court posited two alternative constructions of the statutory scheme and adopted one because it found that the other would violate the United States Constitution. According to the Court's reasoning, the statutory scheme could be construed as either "providing the only requirements for primary ballot access excluding all others, or, in the alternative as providing minimum requirements for primary ballot access but permitting imposition by the party of additional requirements that are consistent with the primary election system and do not infringe the constitutional rights of candidates and voters." App. 11.

Although normal rules of statutory construction clearly favored the former construction, the state court rejected it and opted for the latter, non-exclusive reading of the law.

The state court's decision was expressly based on the erroneous belief that a construction of the statutes which left the enforcement of the 15% rule to the political party itself and which would allow candidates who had not recieved 15% of the convention vote to be placed on the primary ballot "would substantially interfere with the fundamental rights of association guaranteed to the party and its members by the First and Fourteenth Amendments," App. 24, and thus would render Chapter 53 unconstitutional. Id., App. 11. See also, Opinion of the Justices, 385 Mass. 1201, 434 N.E. 2d. 960 (1982). The

Court, therefore, adopted the second construction and incorporated the State Democratic Party's 15% rule into the Massachusetts legislative scheme. Id.

A plain reading of the court's opinion demonstrates that the court incorporated the party rule "not as a matter of statutory construction, but because it thought the Federal Constitution required such action." Red Cross Lines v. Atlantic Fruit Co., 264 U.S. 109, 120 (1924). Out of deference to its mistaken view of federal law, the Supreme Judicial Court abandoned its basic rules of statutory construction.<sup>1/</sup>

---

<sup>1/</sup> Ordinary statutes are construed according to their plain meaning in light of their legislative history so as to accomplish the purpose of their enactment. Commonwealth v. Galvin, 388 Mass. 326, \_\_\_ N.E. 2d. \_\_\_, (1983), Board of Education v. Assessor of Worcester, 368 Mass. 511, 513, 333 N.E. 2d. 450, (1975).

The court ignored the literal words of the statutes that "the nomination of candidates shall be by nomination paper," G.L. c.53, §44, and that "no candidate shall be nominated . . . in any other manner than is provided in this chapter or chapter fifty-two". G.L. c.53, §2. While the court paid lip service to these provisions, App. 10, nowhere in the body of its opinion did it deal with the import of these phrases. Similarly, the court ignored the relevant legislative history. The Massachusetts legislature had in the past provided for binding and non-binding nominating conventions, but had abolished conventions in favor of a binding primary system. See 1973 Mass. Acts c.429. Finally, and most egregiously, the court ignored the fact that the Massachusetts legislature had

passed a bill explicitly providing that the statutes were to be considered as setting the only qualifications for access to primary ballots. It was only because the justices of the Supreme Judicial Court expressed an opinion that the bill would violate federal guarantees of political association that the bill failed enactment. See Opinion Of The Justices, 385 Mass. 1201, 434 N.E. 2d. 960 (1982). Thus, but for the state court's twice articulated view of the requirements of the federal constitution, state law-makers would have eliminated any ambiguity in the statutory scheme and made the state's control over ballot qualifications exclusive.

Generally, the construction of a state statute by the highest court of a state is binding and dispositive and

does not give rise to a federal question. Quongham Wah Co. v. Industrial Accident Comm. of California, 255 U.S. 445, 446-47 (1921). However, this case falls within an exception to that general rule since the Supreme Judicial Court's construction was premised solely upon an erroneous view of the federal constitution. Under these circumstances, the Massachusetts Court's opinion is not insulated from further review by this Court, because, "this basis for construing a state statute creates a federal question." United Air Lines v. Makin, 410 U.S. 623, 630 (1973).

The Court's decision rested solely on federal grounds and was based exclusively upon its reading of this Court's decision in Democratic Party of the United States v. Wisconsin, 450 U.S. 107

(1981), (hereinafter Wisconsin). App. 23-24. The Supreme Judicial Court obviously "felt compelled by what it understood to be federal constitutional considerations to construe and apply its own law in the manner it did. [This court, therefore, has] jurisdiction and should decide the federal issue. . . ." Zacchini v. Scripps-Howard Broadcasting Co., 433 U.S. 562, 568 (1976), See also, St. Martin Evangelical Lutheran v. South Dakota, 451 U.S. 772, 780 n.9 (1981).

II. The Decision Of The Massachusetts Supreme Judicial Court Was Based On An Erroneous Understanding Of Federal Constitutional Law.

A. Introductory Analysis

The Supreme Judicial Court required the state to enforce the Democratic Party rule because, in its view, if the state



did not enforce the rule the party's right of political association would be unconstitutionally burdened.

The burden which the court found derived from the fact that independent voters could: sign the nomination papers of Democratic candidates, enroll in the Democratic party on the day of the primary election, vote for a Democratic candidate, and re-enroll as independent voters after the primary. App. 23-24. The court found that these "realities", coupled with a statutory scheme that did not require the state to enforce the party's 15% rule, would effectively eliminate the party's control over the selection of its candidates in general elections and therefore would amount to "a substantial interference with the fundamental rights

of association guaranteed to the party and its members by the First and Fourteenth Amendments." App. 24.

The court's reasoning is flawed in three respects. First, the court below misconstrued the precedent set in Wisconsin. Second, the court improperly identified a burden on associational rights of the Democratic Party and its members and third the court failed to recognize the compelling state interest which justifies any burden that the statutes may place impose.

**B. The Supreme Judicial Court  
Misconstrued The Precedent  
Set In Wisconsin.**

The only authority the Supreme Judicial Court cited to support its finding of a substantial interference with associational rights was Wisconsin. The court below misunderstood this

Court's holding in Wisconsin and misapplied its reasoning to the facts of the current controversy.

The Supreme Judicial Court's misunderstanding of the Wisconsin decision is highlighted by the court's repeated reference to the Wisconsin statute that this Court supposedly held unconstitutional. App. 18-23. A careful reading of the decision reveals that no statute was declared unconstitutional. In fact, this Court was very careful to point out that the right of the state of Wisconsin to conduct an open primary was not challenged.<sup>2/</sup>

---

<sup>2/</sup> This Court expressly stated that, "The question in this case is not whether Wisconsin may conduct an open primary election if it chooses to do so. . ." Wisconsin at 120.

The issue decided in Wisconsin was expressly and appropriately limited to whether "the state may compel the national party to seat a delegation chosen in a way that violates the rules of the Party." Id. at 121. The Court's answer to this question derived from the unique role played by national political party nominating conventions. The narrowness of the Wisconsin holding is further reflected by this Court's single citation to Cousins v. Wigoda, 419 U.S. 477 (1975), as support for its conclusion. Wisconsin at 121. This Court reviewed the earlier Cousins decision finding that, "[t]he court reversed the state judgment holding that 'Illinois' interest in protecting the integrity of its election process cannot be deemed compelling in the context of the

selection of delegates to the National Party Convention." Cousins at 491. That disposition controls here." Wisconsin at 121.

The Supreme Judicial Court has expanded this decision beyond the question of seating delegates at national nominating conventions. In the Supreme Judicial Court's view all conflicts between state law and state party rules must be resolved in favor of the party rule.<sup>3/</sup>

---

<sup>3/</sup> The dissent in the Wisconsin decision seems to have anticipated such a misunderstanding. "In evaluating the constitutional significance of this relatively minimal state regulation of party membership requirements, I am unwilling, at least in the context of a claim by one of the two major political parties, to conclude that every conflict between state law and party rules

(footnote continued)

The lower court's justification for its distorted reading of the Wisconsin decision rested upon its belief that the decision's focus was on the nature of the purported interference with the associational rights of the party and its members. To the extent that the nature of the interference is of importance, the court below failed to recognize the critical distinction between the Wisconsin and the Massachusetts statutory schemes. The Wisconsin statutes required the national party to seat delegates who were obligated to

---

(footnote continued)

---

concerning participation in the nomination process creates a burden on associational rights. Wisconsin at 130, (Powell, J. dissenting)

follow the will of individuals who did not belong to the party. The Massachusetts scheme, however, permits only individuals who publicly and openly declare their affiliation with the Democratic Party to take part in the nominating process. The Massachusetts statutes do not impose the type of burden on political parties which this Court discussed and rejected in the Wisconsin decision. Neither Wisconsin nor Cousins has any applicability beyond the context of state regulations that purport to govern the seating of delegates at national nominating conventions. They do not support the decision of the court below.



C. The Supreme Judicial Court  
Erroneously Found That The  
State's Non-enforcement Of The  
15% Rule Would Burden The Asso-  
ciational Right Of The State  
Party and Its Members.

The second fundamental error in the Supreme Judicial Court's opinion is the finding that the Massachusetts statutory scheme, which does not provide for the enforcement of the 15% rule, burdens the right to political association enjoyed by the state Democratic Party and its members. The court below found that the state statutes burden the state party's associational right both by eliminating the 15% rule and by allowing the participation of newly enrolled party members in the nominating process.

Contrary to the assertions of the Supreme Judicial Court, the Massachusetts statutes do not (and would not, if construed properly) nullify, App. 23 or

preclude, App. 17 or eliminate, App. 16, 23 the 15% rule. The party is free to adopt the rule and to enforce the rule in any manner it chooses. For example, it can refuse to endorse or recognize candidates that receive less than 15% of the convention vote. It can withhold funds or other support from those candidates. It can take any type of disciplinary action provided by its charter against those candidates that seeks to violate its 15% rule. The Massachusetts statutory scheme does not preclude the party from adopting or enforcing such a rule anymore than it precludes the party from conducting a convention. The statutes merely provide that if the party, on its own, conducts a convention and adopts a 15% rule, the party, not the state, has the responsi-

bility to enforce the rule. As this court found in Wisconsin, it is possible to both preserve the state primary system and to allow the party to enforce its own rules. Wisconsin at 126.

The Supreme Judicial Court also erroneously concluded that the state statutes burdened party members' right to political association because previously unenrolled voters are allowed to enroll in the party on the day of the primary and to take part in the nominating process. App. 23-24. The court found that the participation of individuals who "may have only a tenuous affiliation with the party," App. 23, burdens the right of members with more substantial affiliation to control the election of the party's candidates.

There is no basis in law or fact for limiting the constitutional rights of political association based upon the duration of the association. New members of the Democratic party have as much right to associate with the party and to seek to control the nomination process as those individuals who have been enrolled Democrats for substantially longer periods of time. To suppose that individuals who enroll in the party for purposes of the primary election do not share the common goals of party members of long standing is to ignore political reality. For an independent voter to openly and public enroll in the Democratic party and to vote in the Democratic primary, forsaking participation in the primary of any other political party, is certainly a substantial indication of that voter's

political philosophy.

Independents and members of other parties who seek to participate in a party primary will do so precisely because they identify with the community of interest, if indeed one exists. Their very motive for participating in the primary would be to associate with a party presenting, "candidates and issues more responsive to their immediate concerns." Wisconsin, at 132 n.5, (Powell, J. dissenting) (citations omitted).

The Supreme Judicial Court attempted to bring its reasoning within the majority decision in Wisconsin by adopting the logic of the minority opinion. The court below found that participation of recent Democrats in the Democratic primary was equivalent to participation by Republicans in the Democratic National Nominating Convention. According to the court below, the burden on the associational

rights of party members is the same whether Republicans are allowed to participate or whether recently enrolled Democrats are allowed to participate. To support this notion, the Court cited the dissent in the Wisconsin decision for the proposition that the distinction between open and closed primaries has become blurred. App. 22. Of course, in the view of the dissenting Justices even an open primary which allows Republicans to take part in the nominating process of the Democratic party did not constitute a substantial burden on associational freedom of members of the Democratic party. See Wisconsin at 134. The Massachusetts closed primary which allows recently enrolled Democrats to participate does not constitute a burden, let alone a substantial one.

D. The Supreme Judicial Court  
Improperly Failed To Consider  
The Compelling State Interest.

The third critical error in the Supreme Judicial Court's opinion, stems from its failure to even examine the question of whether there was a sufficiently compelling state interest to justify the burden it found to have been placed on the Democratic Party's associational rights. To the extent that the Massachusetts statutory scheme does impose some burden on the associational right of the Democratic party and its members, the Attorney General submits that burden is justified by a sufficiently compelling state interest. "Neither the right to associate nor the right to participate in political activity is absolute." United States Civil Service Commission v. National



Association of Letter Carriers, 413 U.S. 548 (1973). The right of the state to conduct and regulate a primary election can not be denied. United States v. Classic, 313 U.S. 299 (1941). A state statutory scheme that sets forth uniform minimum requirements for obtaining access to primary ballots is directed towards the compelling state interest of maintaining the integrity of the electoral process. The establishment of the primary system open to independent voters who enroll in the party on the day of the primary is designed to encourage increased voter participation and to eliminate dominance by political bosses. See State Ex Rel LaFollette v. Democratic Party, 93 Wis. 2d. 473, 492, 287 N.W. 2d. 519, 527 (1980) rev'd. sub, nom, Democratic Party of U.S. v. Wisconsin, 450 U.S. 107 (1981).

These state interests are compelling and relate directly to the conduct of the primary election. The facts and equities present here make this case markedly different from Wisconsin and Cousins where the state interests were recognized as valid but were not viewed as sufficient to justify the substantial intrusion into the internal operation of the National Nominating Convention. The Supreme Judicial Court, blinded by its duties to avoid constitutional problems, failed to recognize this distinction. This Court should, therefore, grant plenary consideration of this matter and relieve the Supreme Judicial Court of the compulsion to interpret the statutes as it did. For this Court to allow the Supreme Judicial Court's decision "to stand as it is would risk an affirmance

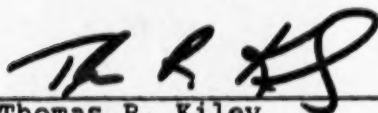
of a decision which might have been decided differently if the court below had felt free, under [this Court's] decisions, to do so." Perkins v. Denguet Mining Co., 342 U.S. 437, 443 (1952).

### CONCLUSION

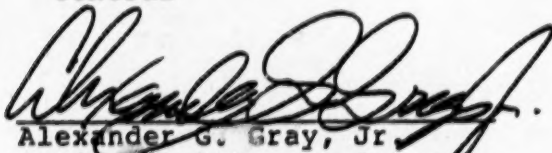
The Supreme Judicial Court rejected an interpretation of the Massachusetts election law because of a misunderstanding of the federal constitutional principles involved. That error presents an important federal question that deserves the plenary consideration of this Court. For these reasons and those articulated in the Attorney General's prior submission, this Court should note probable jurisdiction or grant certiorari.

Respectfully submitted,

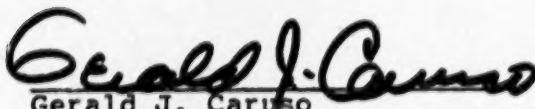
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DATED: March 16, 1983

FREDERICK C. LANGONE & others<sup>1/</sup> vs.  
SECRETARY OF THE COMMONWEALTH &  
others.<sup>2/</sup>

O'CONNOR, J. Frederick C. Langone, four voters who claimed to be supporters of Langone's candidacy for Lieutenant Governor of the Commonwealth, and the Langone for Lieutenant Governor Committee, brought this action in the Superior Court against the Secretary of the Commonwealth. The complaint alleged

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1/ Madeline G. Sarno, Victor Grillo, Louis Ferretti, Gail A. Fasano, referred to herein as the Langone supporters, The Langone for Lieutenant Governor Committee, Joel M. Pressman, and plaintiff-intervenor, Francis X. Bellotti, as Attorney General of the Commonwealth.

2/ The Democratic State Committee, Evelyn F. Murphy, Samuel Rotondi, Louis R. Nickinello, John F. Kerry, and Lois E. Pines.

that, by refusing to print Langone's name on the September 14, 1982, Democratic State party primary ballot as a candidate for the party's nomination for Lieutenant Governor, the Secretary deprived the plaintiffs of various rights provided by statutes of the Commonwealth and guaranteed by the United States and Massachusetts Constitutions. An injunction was sought that would have required the Secretary to place Langone's name on the primary ballot. The other defendants, whose names appeared on the primary ballot, and Joel M. Pressman, as plaintiff, were added to the case on the Secretary's motion. The Attorney General intervened as a plaintiff and filed a complaint seeking declaratory relief and an order requiring the Secretary to place the

names of Langone, Pressman, and "other candidates who have fully complied with all applicable statutory requirements imposed by G.L. c. 53, on the ballot for the state primary for the Democratic Party, notwithstanding any contrary provision of the party charter."

A single justice of this court allowed a joint "Petition for Transfer" to the Supreme Judicial Court for Suffolk County, and on a motion by all the parties, reserved and reported to the full court the following questions of law:

"1. Whether all candidates who have complied with applicable statutory requirements must appear upon the Democratic state primary ballots, notwithstanding the failure to obtain at least fifteen percent of the vote on any



ballot of the Democratic Convention pursuant to Article Six, Section III of the 'Charter of the Democratic Party of the Commonwealth'?

"2. Whether the decision by the Secretary of the Commonwealth that he will not place upon the Democratic state primary ballots those candidates who failed to obtain at least fifteen percent of the vote on any ballot of the Democratic Convention pursuant to Article Six, Section III of the 'Charter of the Democratic Party of the Commonwealth', but otherwise complied with the statutory requirements to have their names placed upon the ballots violated the constitutional or statutory rights of the voters, the candidates, or their supporters?"

On July 6, 1982, we issued an order that said "[u]pon consideration of the argument and briefs of the parties, we interpret the State statutes in light of the State and Federal constitutions and rule that the Secretary must give effect to the relevant charter provision. Accordingly, we answer the questions reported, 'No.'" This opinion is an explanation of that order.

On April 23, 1982, the Justices of this court issued an advisory opinion to the Governor. Opinion of the Justices, 385 Mass. 1201 (1982). The first sentence of G.L. c. 53, §44, as amended through St. 1981, c. 278, §1, states, "The nomination of candidates for nomination at State primaries shall be by nomination papers." There was pending before the Governor for his

approval, House Bill No. 5852, which would have added, after that sentence, the following sentence:

"Notwithstanding the charter, rule or by-law of a political party, any candidate, who is enrolled in such political party, submitting nomination papers subject to the provisions of this chapter shall be a candidate for nomination at the state primary." The proposed language, if constitutional, would have rendered ineffective Article Six, Section III, of the charter of the Democratic party of the Commonwealth of Massachusetts which provides: "There shall be a State Convention in even-numbered years for the purpose of endorsing candidates for statewide offices in those years in which such office is to be filled. Endorsements

for statewide office of enrolled Democrats nominated at the Convention shall be by majority vote of the delegates present and voting, with the proviso that any nominee who receives at least 15 percent of the Convention vote on any ballot for a particular office may challenge the Convention endorsement in a State Primary Election." This is popularly known as the 15% rule. The Justices interpreted the proviso to mean that a convention nominee who fails to receive at least 15% of the convention vote on any ballot is not entitled to have his or her name placed on the primary ballot. Id. at 1025. The Justices advised the Governor that "[i]f House No. 5852 were approved, G.L. c. 53, §44, as thereby amended, would abridge the constitutional rights of the

Democratic party and its members to associate by allowing candidates to be placed on the Democratic State primary ballot in contravention of the party's charter." Id. at 1207-1208.

On May 21 and 22, 1982, the State Democratic party held its convention for the purpose of endorsing its candidates for statewide office. The defendants Murphy, Rotondi, Kerry, Pines, and Nickinello received at least 15% of the convention vote cast on one or more ballots. The plaintiffs Langone and Pressman failed to obtain at least 15% of the vote on any ballot. On May 25, 1982, the chairman of the Democratic State Committee sent a certified copy of the party charter to the Secretary and gave him the names of those individuals who had obtained at least 15% of the

vote on one or more ballots, the Secretary released a statement that pursuant to the April 23 Opinion of the Justices, supra, he would be unable to place on the State primary ballot the names of Langone and Pressman although they had filed valid nomination papers. On the following day the director of elections sent letters to Langone and Pressman containing the same information. This action was commenced on June 2, 1982.

Candidates of political parties for statewide office in this Commonwealth are nominated at primaries held for that purpose. G.L. c. 53, §§2, 41. General Laws c. 53 provides several requirements for primary ballot access, including requirements that only persons certified as enrolled members of a political party

may be candidates for that party's nomination, §48, and that candidates for the nomination of a political party must file nomination papers containing at least 10,000 certified voter signatures.

G.L. c. 53, §44.<sup>3/</sup> General Laws c. 53, §44, further provides that "[t]he nomination of candidates for nomination at state primaries shall be by nomination papers," and §2, as appearing in St. 1975, c. 600, §7, provides that "[n]o candidates shall be nominated . . . in any other manner than is provided in this chapter or chapter fifty-two."<sup>4/</sup> These several sections of G.L. c. 53

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<sup>3/</sup> Both Langone and Pressman had complied with the requirements of G.L. c. 53, §44, by filing nomination papers containing more than 10,000 certified voter signatures.

<sup>4/</sup> General Laws c. 52 is irrelevant to the present inquiry.



may reasonably be construed in two ways: as providing the only requirements for primary ballot access, excluding all others, or, in the alternative, as providing minimum requirements for primary ballot access but permitting imposition by the party of additional requirements that are consistent with a primary election system and do not infringe the constitutional rights of candidates and voters. Under the first construction, a candidate who satisfies the express statutory requirements would have a right to the printing of his or her name on the primary ballot. Under the second construction, compliance with the express statutory requirements would not entitle candidates to appear on the

ballot in the absence of compliance with the party rule also. If we were to adopt the first construction, we think that G.L. c. 53 would be unconstitutional. However, we think that, since the provisions of G.L. c. 53 are not expressly preemptive, the second construction is permitted by reasonable principles of construction and would avoid constitutional difficulties. Therefore, we adopt it. "It is our duty to construe statutes so as to avoid

. . . constitutional difficulties, if reasonable principles of interpretation permit it." School Comm. of Greenfield v. Greenfield Educ. Ass'n, 385 Mass. 70, 79-80 (1982). Staman v. Assessors of Chatham, 351 Mass. 479, 486-487 (1966). We discuss below our reasons for

concluding that constitutional considerations require the second construction of G.L. c. 53.

In Opinion of the Justices, 385 Mass. at 1204, the Justices stated that the right to associate with the political party of one's choice is an integral part of the freedom of association for the advancement of common political beliefs protected by the First and Fourteenth Amendments to the Constitution of the United States. Kusper v. Pontikes, 414 U.S. 51, 56-57 (1973). The Justices further stated that there is implicit in that freedom a political party's substantial interest in ensuring that party members have an effective role in determining who will appear on a general election ballot as that party's candidate, citing Democratic Party of U.S. v. Wisconsin,

450 U.S. 107 (1981). The Justices noted that the winner by a plurality of a party primary in this Commonwealth becomes that party's candidate in the general election, and that voting in the party primary is open both to voters who are enrolled as party members before the primary and to those who are unenrolled until they request that party's ballot at the polls. G.L. c. 53, §37. They noted also that the registered voters who sign nomination papers need not be members of the party. G.L. c. 53, §46. It followed that if the only requirements for primary ballot access were the existing Massachusetts statutory requirements unaugmented by party rule, "a candidate for statewide election could be placed on the Democratic party ballot and win the

primary, thus becoming entitled to be placed on the general election ballot as the Democratic party candidate, with little or no support from the regular party membership." Id. at 1205. The Justices concluded that this would substantially infringe the Democratic party's right of freedom of association, id. at 1206, and that the Commonwealth's interest in the integrity of the election process does not constitutionally justify elimination of party control over who the party's candidate in the general election will be. Id. at 1207.

In answering the questions reported by the single justice in the case before us, we recognized that advisory opinions, "although necessarily the result of judicial examination and

deliberation, are advisory in nature, . . . not adjudications by the court, and do not fall within the doctrine of stare decisis." Commonwealth v. Welosky, 276 Mass. 398, 400, cert. denied, 284 U.S. 684 (1931). "In accordance with our duty, we examine[d] the [questions reported by the single justice] anew, unaffected by the advisory opinion." Lincoln v. Secretary of the Commonwealth, 326 Mass. 313, 314 (1950). We were aided in that effort by the oral arguments and briefs of the parties. We again concluded that G.L. c. 53 would substantially infringe the Democratic party's fundamental right of association if it eliminated the 15% rule, thus necessitating strict scrutiny, which it does not survive. Bachrach v. Secretary of the

Commonwealth, Mass. Adv. Sh. (1981), 93, 101. More of an intrusion on the party's fundamental right of association than is required to protect the Commonwealth's compelling interest in the integrity of the election process, American Party of Texas v. White, 415 U.S. 767, 783 (1974), Kusper v. Pontikes, 414 U.S. 51 (1973), Rosario v. Rockefeller, 410 U.S. 752 (1973), is not constitutionally permissible. See Ridell v. National Democratic Party, 508 F. 2d 770, 776-778 (5th Cir. 1975). The Commonwealth's interest in the integrity of the election process does not require, and therefore does not permit, preclusion of a party rule that reserves to its convention delegates the right to bar from the party's primary ballot candidates who lack the support of at



least 15% of those delegates on any convention ballot.

In Democratic Party of U.S. v. Wisconsin, 450 U.S. 107 (1981), the United States Supreme Court struck down a State statute that compelled the Democratic party, contrary to national party rules, to seat delegates at its national convention who were bound by the statute to vote on the first ballot in accordance with the results of an open primary. An open primary is one in which any registered voter can participate regardless of party affiliation and without publicly declaring it. The plaintiffs argue that Democratic Party of U.S. v. Wisconsin, supra, stands only for the proposition that a State may not interfere with the internal affairs of a national political

party, such as the naming of the party's delegates to its national convention. We think that the principle enunciated in that case is not so narrow. The Court phrased the question before it as "whether, once Wisconsin has opened its Democratic Presidential preference primary to voters who do not publicly declare their party affiliation, it may then bind the National Party to honor the binding primary results, even though those results were reached in a manner contrary to National Party rules." Id. at 120. Reasoning that "the inclusion of persons unaffiliated with a political party may seriously distort its collective decisions -- thus impairing the party's essential functions -- and that political parties may accordingly protect themselves 'from intrusion by

those with adverse political principles,' Ray v. Blair, 343 U.S. 214, 221-222 [1952]," id. at 122, the Court held that "if Wisconsin . . . open[s] its primary, it cannot require that Wisconsin delegates to the National Party Convention vote there in accordance with the primary results, if to do so would violate Party rules." Id. at 126. To be sure, the Court declared that the Wisconsin statute impermissibly interfered with the party's internal affairs, as the plaintiffs point out, but it is significant that the Court's focus was on the nature of the interference, which was the imposition on the party of convention votes for the party's presidential nominee that may not have reflected the choice of party members.

In order to vote at a Massachusetts primary, an unenrolled voter may enroll in a political party at the polling place immediately before voting, and receive that party's ballot. G.L. c. 53, §37. The voter may become unenrolled again, or change his or her enrollment on the day following the primary. G.L. c. 53, §38. This section also provides that at primaries a clerk shall make available within the polling place certificates to enable a voter to make such changes. Since these provisions require that party affiliation be publicly declared, the Massachusetts primary is not technically "open" as was the Wisconsin primary in Democratic Party of U.S. v. Wisconsin, supra, but the availability of party affiliation to unenrolled voters, which can be little

more than momentary and may be for a purpose that is entirely inconsistent with, or at least unsupportive of the principles of the party, blurs any meaningful distinction between open and closed primaries. See Democratic Party of U.S. v. Wisconsin, supra at 133 (Powell, J., with whom Blackmun and Rehnquist, JJ., joined, dissenting). Such affiliation demonstrates neither commitment to, nor acceptance of, the political, social, and economic philosophies and programs for which the party has organized. "[A] political party has a legitimate -- indeed, compelling -- interest in ensuring that its selection process accurately reflects the collective voice of those who, in some meaningful sense, are affiliated with it. Freedom of

association would prove an empty guarantee if associations could not limit control over their decisions to those who share the interests and persuasions that underlie the association's being" (emphasis added). L. Tribe, American Constitutional Law 791 (1978).

Since nomination papers may be signed by unenrolled voters, G.L. c. 53, §46, and since voters at the primary may have only a tenuous affiliation with the party, c. 53, §37, if G.L. c. 53 nullifies a party rule requiring that a candidate for nomination have a modicum of support from members with substantial affiliation with the party, it as effectively eliminates that party's control of who its candidates in general elections will be as did the Wisconsin statute held unconstitutional in

Democratic Party of U.S. v. Wisconsin,  
supra. We view this as a substantial interference with the fundamental rights of association guaranteed to the party and its members by the First and Fourteenth Amendments. Therefore, we reject a construction of G.L. c. 53 that would render ineffective all party rules governing primary ballot access, and we construe the statute as permitting any such rule that neither defeats the purpose of a primary election system nor violates the constitutional rights of candidates or voters.

We turn to a consideration whether a construction of G.L. c. 53 as recognizing the Democratic party's 15% rule would defeat the legislative purpose in providing for primary elections, and we conclude that it would



not. The aim of the primary system is the encouragement of wide participation in politics and discouragement of candidate selection by party bosses. Democratic Party of U.S. v. Wisconsin, supra at 127 (Powell, J., with whom Blackmun and Rehnquist, JJ., joined, dissenting). Popular participation in the candidate selection process is assured by G.L. c. 53, §44, requiring nomination papers signed by at least 10,000 registered voters, and by c. 53, §37, which provides that primary votes may be cast by persons who are unenrolled until they go to the polls. This broad citizen participation is not negated by application of the 15% rule. The fact that five candidates for selection as the Democratic party's candidate for Lieutenant Governor

received sufficient delegate support to satisfy the party charter requirement warrants the inference that the selection process was not dominated by party bosses. The 15% rule does not defeat the legislative purpose in adopting a primary system. We need not consider at what point the legislative purpose would be defeated by a different party rule requiring a higher percentage of delegate support.

Primary elections are the creatures of statute and are an integral party of the election process. United States v. Classic, 313 U.S. 299, 314 (1941). Enforcement by the Commonwealth of the 15% rule is State action and is, therefore, subject to constitutional scrutiny. Bullock v. Carter, 405 U.S. 134, 140 (1972). Terry v. Adams, 345

U.S. 461 (1953). Shelley v. Kraemer,  
334 U.S. 1 (1948). Smith v. Allwright,  
321 U.S. 649 (1944). Nixon v. Condon,  
286 U.S. 73 (1932). Nixon v. Herndon,  
273 U.S. 536 (1927). See L. Tribe,  
American Constitutional Law 787  
(1978).<sup>5/</sup> For the purpose of  
evaluating the plaintiffs' claims that  
the 15% rule violates rights guaranteed  
to them by the Federal and State  
Constitutions, we treat the rule as  
though it were expressly contained in  
G.L. c. 53. See L. Tribe, American  
Constitutional Law 790 n. 2 (1978).

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<sup>5/</sup> We have recently held that the  
protection of art. 9 of the  
Massachusetts Declaration of Rights is  
not from State action alone. Batchelder  
v. Allied Stores Int'l, Inc., 387 Mass.  
83, 88 (1983). But since we find State  
action present, we need not decide  
whether that case negates the necessity  
of State action under our State  
Constitution.

We have concluded that G.L. c. 53 would violate the constitutional rights of the Democratic party and its members if it were to exclude every form of primary ballot access control by party members with a more substantial party affiliation than is demonstrated by accepting a Democratic party ballot on primary election day. We have also concluded that enforcement of the 15% rule would not defeat the legislative purpose in adopting a primary system. We must further inquire whether G.L. c. 53, as augmented by the 15% rule, would deprive the plaintiff candidates or voters of rights of free speech and association guaranteed to them by the First and Fourteenth Amendments to the Constitution of the United States and arts. 1, 16, and 19 of the Massachusetts

Declaration of Rights, or would violate their rights to equal protection secured by the Fourteenth Amendment or their rights to freedom and equality of elections secured by art. 9 of the Declaration of Rights. The same basic issues relative to the United States Constitution must be addressed whether our analysis be in First Amendment or equal protection terms.

The first question to be resolved is whether State enforcement of the 15% rule must withstand strict scrutiny or only a rational basis test. Strict scrutiny is required if the interests asserted by the plaintiffs are fundamental and the infringement of them is substantial. Bullock v. Carter, 405 U.S. 134, 142-144 (1972). In that event, the 15% rule must serve a

compelling State interest with as little infringement as possible in order to be constitutionally permissible. Bachrach v. Secretary of the Commonwealth, Mass. Adv. Sh. (1981) 93, 101. On the other hand, if the asserted interests are not fundamental or the impact on them of the 15% rule is not substantial, State enforcement of the rule is constitutional if it is rationally based. Bullock v. Carter, supra.

Langone and Pressman assert that enforcement of the 15% rule abridges their rights of candidacy, and the Langone supporters and the Langone Committee assert interference with their rights as voters. Although the right to run for public office may not be a fundamental right, see Bullock v. Carter, supra at 142-143, but see

Mancuso v. Loft, 476 F. 2d 187, 195 (1st Cir. 1973), and it clearly is not absolute, Opinion of the Justices, 375 Mass. 795, 811 (1978), the right to vote is fundamental, Harper v. Virginia Bd. of Elections, 383 U.S. 663, 667 (1966), Reynolds v. Sims, 377 U.S. 533, 561-562 (1964), see Sears v. Secretary of the Commonwealth, 369 Mass. 392, 399 (1975), and restrictions on the access of candidates to the ballot inevitably have impact on voters' rights. State Bd. of Elections v. Socialist Workers Party, 440 U.S. 173, 184 (1979). Lubin v. Panish, 415 U.S. 709 (1974). Bullock v. Carter, supra at 143. Therefore, we treat the interests asserted by the candidates, as well as those asserted by the voter plaintiffs, as fundamental.



A determination whether the restrictions on primary ballot access resulting from the application of G.L. c. 53, and the 15% rule have a sufficient impact on plaintiffs' fundamental interests to compel strict scrutiny, requires an examination of that impact "in a realistic light." Bullock v. Carter, supra at 143. Clough v. Guzzi, 416 F. Supp. 1057, 1066 (D. Mass. 1976). We are satisfied that the burden on candidacy and voting rights that results from enforcement of the 15% rule is insufficient to warrant strict scrutiny and that the appropriate inquiry is whether the effect of G.L. c. 53, supplemented by the 15% rule, is rationally related to the furtherance of legitimate State interests. See Storer v. Brown, 415 U.S. 724, 733-736 & n. 7

(1974) (statute disqualifying independent candidate who was registered member of any party within one year prior to primary election, valid); Jenness v. Fortson, 403 U.S. 431 (1971) (independent candidates required to submit petition with signatures of 5% of the eligible voters).

We begin our examination of the impact of the 15% rule with the observation that discrimination between those who gain the support of at least 15% of the convention delegates and those who do not is not invidious. Enforcement of the 15% rule does not deny candidates access to the primary ballot in an unfair way, such as by imposing prohibitive filing fees. See Bullock v. Carter, supra. Everyone who seeks to have his or her name printed on

the Democratic primary ballot has the same opportunity to gather the necessary signatures and convention support. No one is required to obtain a greater percentage of the delegate votes than anyone else. That reasonable opportunity exists to garner the necessary delegate support is demonstrated by the fact that five candidates for the Democratic nomination for Lieutenant Governor did so.

Participation in a primary is not the only route available to the plaintiffs to enable them to associate and express political ideas. Bachrach v. Secretary of the Commonwealth, Mass. Adv. Sh. (1981) 93. A candidate for statewide office is entitled to appear on the general ballot as an independent by compliance with the provisions of

G.L. c. 53, §6. To the extent, however, that the plaintiffs wish to associate and express their ideas as Democrats, those ideas may be represented by the several candidates who obtained the requisite convention support. Every voter cannot be assured that a candidate to his liking will be on the ballot. Lubin v. Panish, supra at 716. "So long as the ideas in which a potential candidate and other party members believe can be represented by another candidate, the primary purpose of political association has been served. A candidate may, of course, prefer to be the party nominee, but judicial cognizance of that interest as an element of associational rights would be merely a backdoor way of establishing [an absolute] right to candidacy."

Developments in the Law -- Elections, 88 Harv. L. Rev. 1111, 1176, 1177 (1975).

Not only does the Commonwealth have a legitimate interest in protecting the constitutional rights of the Democratic party and its members to associate, see South Carolina v. Katzenbach, 383 U.S. 301, 327 (1966), but it also has a proper interest "in maintaining the integrity and stability of existing political parties, thus encouraging responsible action on their part." Tansley v. Grasso, 315 F. Supp. 513, 517 (D. Conn. 1970). This interest is served by assuring that candidates who appear on the general election ballot as representatives of the Democratic party are truly representative of the party as demonstrated by the support of at least 15% of the party's convention delegates

on one or more convention ballots. "The preservation of the integrity of the various routes to the ballot is a proper State objective." Opinion of the Justices, 368 Mass. 819, 823 (1975). We conclude, therefore, that G.L. c. 53, supplemented by the 15% rule, is rationally related to legitimate State interests and does not violate any rights guaranteed to the plaintiffs by the United States Constitution.<sup>6/</sup>

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6/ Langone contends that he had insufficient notice of the requirements for primary ballot access and that therefore his right to due process guaranteed by the Fourteenth Amendment was violated by the failure of the Secretary to print his name on the primary ballot. This contention is without merit. In December, 1981, the Democratic party issues its "Preliminary Call to Convention," which gave clear notice that the party would be holding its endorsing convention pursuant to Article Six of the party's charter. Any assumption that G.L. c. 53 provided the exclusive requirements for primary ballot access was unwarranted.

Although the plaintiffs claim that State implementation of the 15% rule would violate rights guaranteed to them by arts. 1, 9, 16, and 19 of the Massachusetts Declaration of Rights,<sup>7/</sup>

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7/ These articles of the Massachusetts Declaration of Rights state:

Article 1, as appearing in art. 106 of the Amendments to the Massachusetts Constitution, provides: "All people are born free and equal and have certain natural, essential and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing and protecting property; in fine, that of seeking and obtaining their safety and happiness. Equality under the law shall not be denied or abridged because of sex, race, color, creed or national origin."

Article 9 provides: "All elections ought to be free; and all the inhabitants of this Commonwealth, having such qualifications as they shall establish by their frame of government, have an equal right to elect officers, and to be elected, for public employments."

(footnote continued)



they advance no separate reasons, and we are unaware of any, to conclude that the Massachusetts Constitution affords them protection not provided by the First and Fourteenth Amendments of the United States Constitution. We have previously said that the freedoms protected by arts. 16 and 19 are "comparable" to those guaranteed by the First Amendment.

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(footnote continued)

Article 16, as appearing in art. 77 of the Amendments to the Massachusetts Constitution, provides: "The liberty of the press is essential to the security of freedom in a state: it ought not, therefore, to be restrained in this Commonwealth. The right of free speech shall not be abridged."

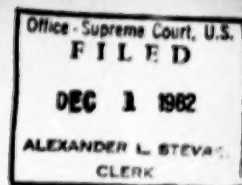
Article 19 provides: "The people have a right, in an orderly and peaceable manner, to assemble to consult upon the common good: give instructions to their representatives, and to request of the legislative body, by the way of addresses, petitions, or remonstrances, redress of the wrongs done them, and of the grievances they suffer."

First Nat'l Bank v. Attorney Gen., 371 Mass. 773, 792 (1977), rev'd on other grounds, 435 U.S. 765 (1978). Bowe v. Secretary of the Commonwealth, 320 Mass. 230, 249 (1946). The Justices have said that "[t]he Massachusetts Constitution does not refer to primaries as such, but concerns itself only with elections." Opinion of the Justices, 359 Mass. 775, 776-777 (1971). Even if the Massachusetts Constitution were to apply to primaries because of their effect on general elections, "the right 'to be elected,' preserved in art. 9, is not absolute. It is subject to legislation reasonably necessary to achieve legitimate public objectives." Opinion of the Justices, 375 Mass. 795, 811 (1978). See Opinion of the Justices, 368 Mass. 819, 823 (1975).

Thus, we have completed the constitutional analysis which requires that we construe G.L. c. 53 not to exclude, but rather, to accomodate the 15% rule. No candidate who fails to obtain at least 15% of the vote on any ballot of the Democratic Convention pursuant to Article Six, Section III, of the "Charter of the Democratic Party of the Commonwealth" must appear on the Democratic State primary ballot. The decision of the Secretary of the Commonwealth to that effect did not violate the constitutional or statutory rights of the voters, candidates, or candidates' supporters.

82 - 927

IN THE  
SUPREME COURT OF THE UNITED STATES  
October Term, 1982



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NO.

---

FREDERICK C. LANGONE, et al.,  
Appellants,

v.

MICHAEL J. CONNOLLY, et al.,  
Appellees.

---

MOTION TO DEFER CONSIDERATION

---

The intervenor-appellant, the Attorney General of Massachusetts, hereby moves that this Court defer consideration of his Jurisdictional Statement until such time as the Supreme Judicial Court issues its Opinion or Opinions. While the Attorney General has filed a Jurisdictional Statement in a timely fashion, he is unable to adequately articulate the precise constitutional questions that have been raised by the decision of the Court below in the absence of the Opinion or Opinions explaining the Court's reasoning.

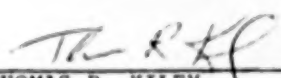
To fully appreciate the need for this Court to note probable jurisdiction, it will be necessary to analyze the Opinion or Opinions of the Supreme Judicial Court. While it is apparent from the nature of the proceedings below and from the decision offered by the Court that this case presents novel and significant questions of constitutional dimension, the decision should be considered only after this Court has had an opportunity to review the underlying reasoning.

For the foregoing reasons, the Attorney General specifically requests:

1. That this Court defer consideration of the Jurisdictional Statement until such time as the Supreme Judicial Court issues its Opinion or Opinions; and,
2. That the Attorney General be allowed to supplement his Jurisdictional Statement within thirty days from the date the Supreme Judicial Court issues its Opinion or Opinions.

Respectfully submitted,

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DATED: December 1, 1982

JAN 7 1983

ALEXANDER L. STEVAS.

CLERK

Nos. 82-927 and 82-936.

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**In the  
Supreme Court of the United States**

OCTOBER TERM, 1982

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**FREDERICK C. LANGONE, ET AL.,  
APPELLANTS,**

**v.**

**MICHAEL J. CONNOLLY, AS HE IS  
SECRETARY OF STATE OF THE  
COMMONWEALTH OF MASSACHUSETTS, ET AL.,  
APPELLEES.**

---

**ON APPEAL FROM THE SUPREME JUDICIAL COURT  
FOR THE COMMONWEALTH OF MASSACHUSETTS**

---

**Motion to Dismiss.**

---

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MASSACHUSETTS**

## QUESTION PRESENTED

Whether the Massachusetts Democratic Party may require by its Charter that, in order for the name of a candidate for statewide office to appear upon the Democratic state primary ballots, the candidate must receive at least fifteen percent of the vote of the delegates, on any ballot, at the Massachusetts Democratic Endorsing Convention?/1/

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/1/ Plaintiffs-appellants are Frederick C. Langone ("Langone"), Madeline G. Sarno, Victor Grillo, Louis Ferretti, Gail A. Fasano, and The Langone for Lieutenant Governor Committee (collectively referred to as "Langone supporters"). Plaintiff Joel E. Pressman ("Pressman") did not file a notice of appeal. Intervenor-plaintiff-appellant is the Attorney General of the Commonwealth of Massachusetts ("Attorney General").

Defendants-appellees are Michael J. Connolly, as he is Secretary of State of the Commonwealth of Massachusetts ("State Secretary"), Massachusetts Democratic State Committee, Evelyn F. Murphy ("Murphy"), John F. Kerry ("Kerry"), Louis R. Nickinello ("Nickinello"), Lois G. Pines ("Pines"), and Samuel Rotondi ("Rotondi").



### MOTION TO DISMISS

Appellee Michael J. Connolly, as he is Secretary of State of the Commonwealth of Massachusetts, moves to dismiss the appeals<sup>/2/</sup> in the above-entitled case on the grounds that the appeals do not present a substantial federal question and that the Order and Judgment of the Massachusetts Supreme Judicial Court is correct because it accords with applicable decisions of this Court. Sup. Ct. R. 16.1.(b),(d).

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/2/ The Jurisdictional Statement of the Attorney General of the Commonwealth of Massachusetts ("AG Jur. St.") was received on December 3, 1982 (No. 82-927). The Jurisdictional Statement of Langone and Langone supporters, ("Lang. Jur. St.") was received on December 6, 1982 (No. 82-936). This Motion to Dismiss replies to both Jurisdictional Statements. Sup. Ct. R. 16.1.

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ORDER AND JUDGMENT OF THE  
MASSACHUSETTS SUPREME JUDICIAL COURT

The opinion of the Massachusetts Supreme Judicial Court has not been delivered. On July 6, 1982 the court did issue an Order (Appendix ("App.") 11) and rescript (App. 14), see Mass. Gen. Laws ch. 211, §§8, 9, and the Massachusetts Supreme Judicial Court for Suffolk County entered a Judgment on the rescript on July 7, 1982 (App. 15).

Although no opinion has been delivered in this case, appellants acknowledge that the unanimous advisory opinion issued by the Justices of the Supreme Judicial Court on April 23, 1982, Opinion of the Justices, 385 Mass. 1201, 434 N.E. 2d 960 (1982), analyzes and determines similar substantive issues. (AG Jur. St. at 2, 21-23, 25;<sup>/3/</sup> Lang. Jur. St. at

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<sup>/3/</sup> For example, the Attorney General notes:  
(Footnote Continued)

15-17, 19, 42-43, 49). The State Secretary also believes that the opinion in this case will comport with the logic and reasoning incorporated in the Opinion of the Justices.

#### JURISDICTION OF THIS COURT

Appellants contend that "it is not possible" to "specify" "the jurisdictional basis for this appeal" because no opinion has been delivered by the Supreme Judicial Court. They propose that this Court may have jurisdiction grounded on two possible bases. Appellants suggest that the Supreme Judicial Court may either uphold the "constitutionality of the Massachusetts statutory scheme for

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/3/ (Footnote Continued)

"The Supreme Judicial Court has issued a related opinion which presented a question similar to that presented here." (AG Jur. St. at 2 n.2). And he "assumes that the logic of the advisory opinion will be reflected in the decision in this case." (Id. at 21).

obtaining access to state primary ballots in light of a challenge that the statutes are repugnant to the Constitution of the United States" or that the court may "hold that the Massachusetts statutory scheme fails to protect the political associational rights of the members of the state Democratic party and is therefore repugnant to the Constitution of the United States." (AG Jur. St. at 3-5; Lang. Jur. St. at 2-4). Appellants' contention and hypothetical holdings are disingenuous.

At the outset, it is important to realize that no party in this case has ever challenged the constitutionality of any statute. Thus, the jurisdictional bases invoked by appellants are inapposite. The Order and Judgment of the Supreme Judicial Court show plainly that this case resolves a contest only between

the constitutionally-recognized associational rights of the Massachusetts Democratic Party, manifested in part by its Charter, and the alleged rights of Langone and Langone supporters. (App. 11, 15).<sup>/4/</sup> No statute is attacked. See, e.g., Slagle v. Ohio, 366 U.S. 259, 264 (1961) (failure to show that any explicit and "timely insistence [was made] in the state courts that a state statute, as applied, is repugnant to the federal Constitution"; appeals dismissed) (quoting Charleston Federal Savings & Loan Assn. v. Alderson, 324 U.S. 182, 185 (1945)).

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<sup>/4/</sup> The joint Petition for Transfer from the trial court to the Supreme Judicial Court for Suffolk County identifies the issue in this case as the "validity and enforcement of the 'fifteen percent rule'" contained in Article Six, Section III of the Charter of the Democratic Party of the Commonwealth. (App. 1).

Therefore, appellants' only available remedy for review by this Court is certiorari because this case involves a final judgment rendered by the highest court of Massachusetts where rights are claimed under the United States Constitution. 28 U.S.C. §1257(3). See, e.g., Coleman v. Miller, 307 U.S. 433, 438 (1939). And, although appellants characterize the nature of these proceedings as appeals, this Court should regard and act on their Jurisdictional Statements as if they seek review by writ of certiorari.<sup>/5/</sup> 28 U.S.C. §2103. See Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 562-63 n.4 (1980) (validity of state statute "not sufficiently drawn in

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/5/ For ease of reference, the State Secretary will continue to refer to the Attorney General and Langone and Langone supporters as appellants and the nature of these proceedings as appeals.



question" to invoke appellate jurisdiction); Garrity v. New Jersey, 385 U.S. 493, 496 (1967) (state statute "too tangentially involved to satisfy" statutory appellate jurisdiction).

CONSTITUTIONAL PROVISIONS  
AND STATUTES INVOLVED

The Attorney General proffers arguments and Langone and Langone supporters assert claims allegedly based on or arising under the First and Fourteenth Amendments to the United States Constitution. In addition, several sections and provisions of the Massachusetts statutes pertaining to political parties, conventions, nominations, primaries, caucuses and elections are referred to in appellants' Jurisdictional Statements and herein.<sup>/6/</sup> They

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<sup>/6/</sup> Mass. Gen. Laws ch. 50, §1; ch. 52, §§1, 10; ch. 53, §§1-3, 6, 9, 13, 25, 35B, 37, 38, 40, 44, 45, 46, 48, 54, 54C, 54D (§§54C, 54D, repealed by 1973 Mass. Acts ch. 429, §5); ch. 55A, §2.

are set out verbatim in the Appendix.  
(App. 18-47).

STATEMENT OF THE CASE

This case was commenced on or about June 2, 1982 in the Superior Court Department of the Massachusetts Trial Court by Langone and Langone supporters against the State Secretary. In their complaint they alleged that the State Secretary had deprived them of various rights guaranteed by the United States Constitution as the result of his decision not to place Langone's name upon the Democratic state primary ballots. Langone and Langone supporters requested an injunction enjoining the State Secretary from failing to place Langone's name upon the ballots for the office of Lieutenant Governor for the Democratic state primary to be held on September 14, 1982.

A motion by the State Secretary to join additional, indispensable parties was allowed by the Superior Court on June 4, 1982. Thus, Evelyn F. Murphy ("Murphy"), John F. Kerry ("Kerry"), Louis R. Nickinello ("Nickinello"), Lois G. Pines ("Pines") and Samuel Rotondi ("Rotondi") and the Democratic State Committee were joined as defendants and Joel M. Pressman ("Pressman") was joined as plaintiff.<sup>/7/</sup>

The State Secretary answered the complaint and filed counterclaims and cross-claims on June 8, 1982 praying for a declaration of the "rights, duties, status and other legal relations of all the parties under Article Six, Section III of the Charter of the Democra-

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<sup>/7/</sup> As explained, infra p. 19 & n.13, Murphy, Kerry, Nickinello, Pines and Rotondi were similarly situated as were Langone and Pressman.

tic Party of the Commonwealth, ["fifteen percent rule"] as interpreted and applied in the Opinion of the Justices, 385 Mass. 1201 (1982), and Chapters 52 and 53 of the General Laws."

The Attorney General intervened as a party plaintiff on June 9, 1982 and the next day filed a complaint seeking declaratory relief and an order requiring the State Secretary to place the names of Langone and Pressman upon the Democratic state primary ballots.

A joint Petition for Transfer to the Supreme Judicial Court for Suffolk County (App. 1) was allowed on June 11, 1982, see Mass. Gen. Laws ch. 211, §4A, and, upon motion by all parties, on June 18, 1982 the case was reserved and reported to the Supreme Judicial Court, see Mass. Gen. Laws ch. 211, §6. (App. 8). The case presented two questions of law to

that court upon the pleadings and a  
Statement of Agreed Facts: /8/

1. Whether all candidates who have complied with applicable statutory requirements must appear upon the Democratic state primary ballots, notwithstanding the failure to obtain at least fifteen percent of the vote on any ballot of the Democratic Convention pursuant to Article Six, Section III of the "Charter of the Democratic Party of the Commonwealth"?
2. Whether the decision by the Secretary of the Commonwealth that he will not place upon the Democratic state primary ballots those candidates who failed to obtain at least fifteen percent of the vote on any ballot of the Democratic Convention pursuant to Article Six, Section III of the "Charter of the Democratic Party of the Commonwealth", but otherwise complied with the statutory requirements to have their names placed [sic] upon the ballots violated the constitutional or statutory rights of the voters, the candidate, or their supporters?

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/8/ All factual statements contained herein are derived from the Statement of Agreed Facts.

The Supreme Judicial Court answered both of the questions "no" and explained that "we interpret the State statutes in light of the State and Federal constitutions and rule that the [State] secretary must give effect to the relevant charter provision." (App. 12).

In other words, the court held that, because Langone failed to satisfy the Massachusetts Democratic Party's "fifteen percent rule", his name may not appear upon the Democratic state primary ballots and, moreover, the decision of the State Secretary not to place Langone's name upon those ballots did not violate the constitutional or statutory rights of Langone or Langone supporters.

#### ARGUMENT

##### I. INTRODUCTION

##### A. HISTORY OF THE PARTY CHARTER AND THE FIFTEEN PERCENT RULE

A brief exposition of the events

antecedent to the adoption of the Massachusetts Democratic Party's Charter will illuminate the question presented for review by this Court, supra p. i. See Democratic Party of the United States v. Wisconsin, 450 U.S. 107, 115-20 (1981). The following history is summarized from the Statement of Agreed Facts:

In 1976, the Massachusetts Democratic Party was in disarray. As one unsuccessful Democratic candidate for the United States Congress lamented, there was "almost no real Democratic Party organization in this state at the local level." The deterioration at the grass roots was attributed by many Party leaders to the legislative elimination in 1973 of statutorily-prescribed pre-primary conventions. Mass. Gen. Laws ch. 53, §§ 54, 54C, 54D (App. 42-44), repealed by 1973 Mass. Acts ch. 429, §5.



To remedy the problems, the 1977 Party Issues Convention mandated the creation of a Charter Commission to draft a proposed charter. At hearings held by the Charter Commission, attended by several hundreds of Democrats across Massachusetts, several themes emerged: organizational decay at the grass roots, weakness of the Democratic State Committee and absence of party discipline and accountability.

The Charter Commission devoted special attention to the candidate endorsement process. The origins of the "fifteen percent rule" can be traced to discussions and debates concerning the "Connecticut challenge primary system." See Tansley v. Grasso, 315 F.Supp. 513 (D. Conn. 1970) (three-judge court). The Chairman of the Amherst Democratic Town Committee advocated the system:

I want to urge a return to the pre-primary endorsement convention. And I want also to urge that its actions be given greater weight as to eventual party nominations. In that regard, I commend to your attention the convention and the "challenge" primary system used in the State of Connecticut, whereby candidates endorsed by party conventions are automatically on the primary ballot while others may challenge only if they have received 20% of the votes cast on any ballot for that office at the particular convention. This guarantees party control over nominations, but at the same time protects the rights of significant minorities within the party. (emphasis supplied).

A Charter Convention was held on May 19, 1979. It was reconvened on November 17, 1979 for the purpose of completing its deliberations on the proposed charter. The provisions of the "fifteen percent rule", as they currently read, and the entire Party Charter were adopted on November 17, 1979. The Party

Charter was adopted by a vote of 609 to 123. /9/

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/9/ Langone and Langone supporters argue that the "Democratic Party took several actions indicating that it never intended, nor did it believe, that Article Six, Section III would take effect absent enabling legislation." (Lang. Jur. St. at 13-15, 43-44). They rely heavily on mailings made by the Democratic State Committee.

The argument is in the nature of an estoppel. It has fatal weaknesses. Nothing in the record suggests that the mailings were intended to induce action or inaction by anyone. Langone and Langone supporters do not allege that they were aware of, or relied on, the mailings. Furthermore, the record negatives any claim that these mailings caused Langone or Langone supporters a detriment. See infra pp. 60-64. The record is devoid of facts to support estoppel in this case. See, e.g., DeSisto's Case, 351 Mass. 348, 351-52, 220 N.E.2d 923, 925 (1966).

Langone and Langone supporters intimate that the failure of the General Court to pass certain bills illustrates legislative displeasure with the "fifteen percent rule" or supports their argument that legislation was necessary to implement it. (Lang. Jur. St. at 15). However, legislative silence is not indicative of legislative intent. See Monaghan, The Supreme Court, 1974 Term-Foreword: Constitutional Common Law, 89

(Footnote Continued)

Article Six, Section III of the  
Party Charter provides:

There shall be a State Convention in even-numbered years for the purpose of endorsing candidates for statewide offices in those years in which such office is to be filled. Endorsements for statewide office of enrolled Democrats nominated at the Convention shall be by majority vote of the delegates present and voting, with the proviso that any nominee who receives at least 15 percent

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/9/ (Footnote Continued)

Harv. L. Rev. 1, 16-17 (1975). Possible reasons for legislative inaction are numerous. H.M. Hart and A. Sacks, The Legal Process: Basic Problems in the Making and Application of Law 1395-96 (tent.ed. 1958). See Helvering v. Hallock, 309 U.S. 106, 119-20 (1939).

Regardless of the interpretation assigned to legislative inaction, in this case it does not pertain because the General Court did act. It passed House Bill No. 5852. See infra pp. 21-24. Therefore, if any significance is attributed to legislative behavior in this case, it must be that the General Court was aware that legislation was necessary to attempt to override the force and effect of the "fifteen percent rule." See Opinion of the Justices, 385 Mass. at 1206, 434 N.E.2d at 963.

of the Convention vote on any ballot for a particular office may challenge the Convention endorsement in a State Primary Election. Opinion of the Justices, 385 Mass. at 1202, 434 N.E. 2d at 960-61.

B. 1982 PARTY CAUCUSES AND  
ENDORISING CONVENTION

The 1982 Party caucuses and the Endorsing Convention were truly "democratic." /10/

Delegates to the Endorsing Convention were elected at caucuses held in each ward and town of Massachusetts on

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/10/ The Attorney General's attempts to denigrate Massachusetts Democratic "party regulars" are curious. See, e.g., AG Jur. St. at 13, 15, 20, 21-31. In the Opinion of the Justices the terms "regular party members" or "regular members of the party" are synonyms for enrolled party members to distinguish them from the "unenrolled voters who enroll at the polls just before receiving ballots", see Mass. Gen. Laws ch. 53, §37 (App. 28), and the "unenrolled" voters who may sign nomi-

(Footnote Continued)

February 6, 1982. All enrolled Democrats were eligible to participate in the caucuses.<sup>/11/</sup> Approximately 100,000 enrolled Democrats did participate in the caucuses that selected the 3,500 delegates to the Endorsing Convention.<sup>/12/</sup>

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<sup>/10/</sup> (Footnote Continued)

nation papers of a Democratic candidate, see Mass. Gen. Laws ch. 53, §§44, 46 (App. 33, 36). 385 Mass. at 1205, 1207, 434 N.E.2d at 962-63. (emphasis original). To equate the term "party regulars" with the pejorative term "party bosses" and to argue that the Supreme Judicial Court has created a "[h]ierarchy" of political associational rights and has "elevate[d] the political associational rights of party regulars above the rights of all other party members" is misleading. "Regular party members" or "regular members of the party", viz. enrolled party members, sustain the vitality of a political party and are the vanguard to advance the political beliefs and ideas of the party.

<sup>/11/</sup> To participate in the February 6, 1982 caucuses an individual was required to enroll as a Democrat on or before December 31, 1981.

<sup>/12/</sup> It is noteworthy that Langone did not obtain nomination papers until March 4,

(Footnote Continued)

On May 21-22, 1982, the Endorsing Convention was held. Five candidates for the office of Lieutenant Governor received at least fifteen percent of the Convention vote cast on one or more ballots: Murphy, Kerry, Nickinello, Pines and Rotondi. The Convention endorsed Murphy. Langone and Pressman failed to receive fifteen percent of the Convention vote on any ballot./13/

On May 25, 1982, the Democratic State Committee notified the State Secretary that the Party endorsed Murphy

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/12/ (Footnote Continued)

1982 (Lang. Jur. St. at 17) or announce his candidacy until March 29, 1982, well after the caucuses were held to elect delegates to the Endorsing Convention.

/13/ Langone received 1 percent of the Endorsing Convention vote on the first ballot and less than 1 percent on the second ballot. Pressman withdrew his name from consideration before any ballot was cast.



for Lieutenant Governor and that Kerry, Nickinello, Pines and Rotondi are "eligible to challenge the Convention endorsement in a state Primary election, in accordance with Article Six, Section III, of the Charter."

On the same day that the State Secretary received notification of the Endorsing Convention results, he released a statement which said, in part:

In accordance with the Supreme Judicial Court's [April 23, 1982 advisory] opinion, I am ... unable to place on the state primary ballot the names of two candidates who have filed otherwise-valid Democratic nomination papers for Lieutenant Governor with my office - Frederick C. Langone and Joel M. Pressman.

On May 26, 1982 the Director of Elections sent separate letters to Langone and Pressman informing each of them of the State Secretary's decision.

The ballots for the Democratic state primary were released to the printer on July 9, 1982. The names of five Democratic candidates for Lieutenant Governor who satisfied the "fifteen percent rule" appeared upon the ballots. The names of the two Democratic candidates for Lieutenant Governor who failed to satisfy the "fifteen percent rule" did not appear.

C. OPINION OF THE JUSTICES

On April 23, 1982 the Justices of the Supreme Judicial Court issued a unanimous advisory opinion to the Governor. Opinion of the Justices, 385 Mass. 1201, 434 N.E.2d 960 (1982). There was pending before the Governor for his approval House Bill No. 5852 which would amend Mass. Gen. Laws ch. 53, §44, concerning "[t]he nomination of candidates for nomination at

state primaries."/14/ "Stating his uncertainty 'as to the necessity or constitutionality of H. 5852 if enacted into law'" (385 Mass. at 1202, 434 N.E.2d at 961), the Governor requested the opinion of the Justices./15/ The Justices interpreted one of the two questions posed by the Governor:

. . .to inquire whether, if House No. 5852 were approved, G.L. c.53, §44, as thereby amended, would abridge the constitutional rights of the Democratic party and its

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/14/ The first sentence of Mass. Gen. Laws ch. 53, §44 is: "The nomination of candidates for nomination at state primaries shall be by nomination papers." (App. 33). House Bill No. 5852 would amend Mass. Gen. Laws ch. 53, §44 by adding after the first sentence the following sentence: "Notwithstanding any party charter, rule or by-law, any candidate submitting nomination papers pursuant to this chapter shall be a candidate for nomination at the state primary."

/15/ The Governor "may require the opinions of the justices of the supreme judicial court, upon important questions of law, and upon solemn occasions." Mass. Const. Pt. II, c. 3, art. 2.

members to associate by allowing candidates to be placed on the Democratic State primary ballot in contravention of the party's charter. Id. at 1203-04, 434 N.E.2d at 961.

At issue was the "fifteen percent rule." Id. at 1202, 434 N.E.2d at 961. The Justices opined that the rule "adds to the statutory requirement of nomination papers for placement on the primary ballot the further requirement that a candidate must receive at least fifteen percent of the [Democratic Endorsing] convention vote." Id. at 1205, 434 N.E.2d at 962. They concluded that the proposed amendment "would abridge the constitutional rights of the Democratic party and its members to associate." Id. at 1207-08, 434 N.E.2d at 964.

The controlling issue in the case at bar was whether the Supreme Judicial Court would ratify the advisory opinion

upon the factual record in this adversarial context. By its Order issued July 6, 1982 (App. 11), the court did ratify the Opinion of the Justices.

II. THE APPEALS SHOULD BE DISMISSED ON THE GROUNDS THAT THEY DO NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION AND THAT THE ORDER AND JUDGMENT OF THE SUPREME JUDICIAL COURT IS CORRECT

Appellants' only available remedy for review by this Court is certiorari. See supra pp. 2-6. This Court should not exercise its judicial discretion to review this case because there are no "special and important reasons therefor" and because the Supreme Judicial Court has not "decided an important question of federal law which has not been, but should be, settled by this Court" and has not "decided a federal question in a way in conflict with applicable decisions of this Court." Sup. Ct. R. 17.1.(c).

As demonstrated below, the appeals should be dismissed because "[i]n light

of ... previous decisions" of this Court  
"appellants have failed to raise any  
substantial federal questions." See,  
e.g., Palmer Oil Corp. v. Amerada Corp.,  
343 U.S. 390, 391 (1952) (per curiam).  
Sup. Ct. R. 16.1.(b), (d).

A.     THERE IS NO CONFLICT BETWEEN  
THE "FIFTEEN PERCENT RULE" AND  
STATUTORY REQUIREMENTS FOR  
PRIMARY BALLOT ACCESS

Appellants premise their arguments  
on two demonstrably incorrect postulates:  
(1) there is a conflict between the  
"fifteen percent rule" and statutory  
requirements for primary ballot access;  
and (2) there is a contest between state  
interests and alleged rights of Langone  
and Langone supporters. The first,  
incorrect postulate is discussed im-  
mediately below. The second is dis-  
cussed infra pp. 29-35.

The Attorney General's entire  
argument is based on the bald assertion

that the "fifteen percent rule" conflicts with the Massachusetts statutory scheme for primary ballot access and that "[t]his case concerns the state's authority to regulate primary elections [sic]." (AG Jur. St. at 11, 12, 15, 18 & n.8, 20). If the "fifteen percent rule" is not eliminated, the Attorney General foresees draconian results. E.g., id. at 14 ("virtual nullification of the primary process"), 27 ("circumvention of the entire primary process"), 31 ("will necessarily, perhaps automatically, divest the state of significant control of ... an 'integral part' of the election process"). Hyperbole can not disguise the inaccuracy of this assertion.

A precise reading of the Opinion of the Justices makes it clear that the Justices did not state that the "fifteen percent rule" superseded the statutory



scheme but that it added a "further requirement" to it. A candidate must still satisfy all statutorily-prescribed filing requirements.<sup>/16/</sup> The state's unchallenged authority to regulate primaries and elections is not in jeopardy.

But the statutes do not provide the exclusive criteria for Massachusetts Democratic state primary ballot access. The Party has imposed a "further requirement", the "fifteen percent rule." 385 Mass. at 1205, 434 N.E.2d at 962.<sup>/17/</sup>

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/16/ The statutory requirements are as follows: nomination papers signed by at least 10,000 registered voters; written acceptance of nomination; certification of party enrollment; and financial interest statement. Mass. Gen. Laws ch. 53, §§9, 44, 45, 46, 48. (App. 26, 33-42). (AG Jur. St. at 9 n.4; Lang. Jur. St. at 11).

/17/ Massachusetts recognizes the vital role political parties play in the electoral process. It establishes procedures for the election of state committees, Mass. Gen. Laws ch. 52, §1 (App. 19), and empowers such committees to make rules and to call conventions. Mass. Gen. Laws ch. 52, §10 (App. 21).

The Supreme Judicial Court has interpreted and harmonized pertinent state statutes and the "fifteen percent rule" consistent with the rights of association of the Party./18/

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/18/ The antiquated state court cases relied on by the Attorney General to support his claim that the "Supreme Judicial Court has reversed a traditional approach used by Courts to resolve conflicts between state law and party rules" (AG Jur. St. at 15-20) warrant little response. The cases cited by the Attorney General each involve a party rule which established a requirement at direct odds with a specific, statutorily-prescribed requirement. The decisions are based on the interpretation and application of state law; federal constitutional rights are not involved. Indeed, most of the cases antedate by decades the recognition by this Court of constitutionally-protected associational rights. See infra pp. 32-33 n.20. The Attorney General avoids any meaningful discussion of two decisions of this Court, Democratic Party of the United States v. Wisconsin, 450 U.S. 107 (1981), and Cousins v. Wigoda, 419 U.S. 477 (1975), two cases which upheld the primacy of a party rule over a state law, by summarily dismissing them in a footnote because they "dealt with seating delegates to a national convention." (AG Jur. St. at 18 n.8).

(Footnote Continued)

B. THERE IS NO CONTEST BETWEEN  
STATE INTERESTS AND ALLEGED  
RIGHTS OF LANGONE AND LANGONE  
SUPPORTERS

The entire argument of Langone and Langone supporters presumes that this case involves a contest between state interests and their alleged rights. The presumption is incorrect. This case resolves a contest only between the constitutionally-recognized associational rights of the Massachusetts Democratic Party, manifested in part by its Charter, and the alleged rights of Langone and Langone supporters.

Langone and Langone supporters complain about a Party rule which is

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/18/ (Footnote Continued)

Nothing in the United States Constitution or in this Court's decisions suggests that only national parties are possessed of associational rights. See Developments in the Law - Elections, 88 Harv. L. Rev. 1111, 1210 (1975).

enforced at the Endorsing Convention, "purely a creation of the members of the Democratic party" (AG Jur. St. at 28-29), and which impacts the primary, "a joint meeting of political or municipal parties" under Massachusetts law. Mass. Gen. Laws ch. 50, §1. (App. 18). Thus, the dispute over the "fifteen percent rule" is essentially a private contest between an unsuccessful Democratic candidate and his Party.

Moreover, as Langone and Langone supporters implicitly acknowledge, the "fifteen percent rule" is not subject to constitutional restrictions unless "state action" is present. (Lang. Jur. St. at 21-27). They rely heavily on two of the White Primary Cases, Terry v. Adams, 345 U.S. 461 (1953), and Smith v. Allwright, 321 U.S. 649 (1944). (Lang. Jur. St. at 22-24).

Langone and Langone supporters state that this Court "expressly ruled" in Smith v. Allwright that "a state officer and a political committee ... may [not] properly exclude a candidate's name from a state primary election [sic] ballot on the basis of a rule adopted by a state political party convention." (Lang. Jur. St. at 21-22). They state further that the "Allwright Court ruled that the state may not validly delegate the power to fix qualifications for primary participation to political parties." (Id. at 22-23). These statements are erroneous.

Smith v. Allwright involved an action for damages arising under the Fifteenth Amendment based on the racial exclusion of a voter. 321 U.S. at 650-51. The case did not involve a claim by a political candidate. There

was no ruling concerning the validity of a state delegation of power./19/

Similarly, Terry v. Adams involved racial exclusion of voters proscribed by the Fifteenth Amendment.

In O'Brien v. Brown, 409 U.S. 1 (1972) (per curiam), this Court suggested that the "state action" found in the White Primary Cases should be limited to cases "in which claims are made that injury arises from invidious discrimination based on race." Id. at 4 n.1. See Kester, Constitutional Restrictions on Political Parties, 60 Va. L. Rev. 735 (1974)./20/

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/19/ Contrary to the Langone statement, this Court has upheld state delegation of the "power to fix qualifications for primary participation to political parties." Ray v. Blair, 343 U.S. 214 (1952).

/20/ The last of the White Primary Cases decisions was rendered in 1953, five years before this Court's seminal decision in NAACP v. Alabama, 357 U.S. 449 (1958), (Footnote Continued)

This case is readily distinguished from the White Primary Cases and the other principal case cited by Langone and Langone supporters, United States v. Classic, 313 U.S. 299 (1941), which "dealt with the power of Congress to punish [criminal] frauds in primaries '[w]here the state law had made the primary an integral part of the procedure of choice." Ray v. Blair, 343 U.S. 214, 226-27 (1952).

This case does not involve blatant racial exclusion or criminal fraud. It does not involve the type of "state action" apparent in the White Primary Cases and Classic. Similar distinctions

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/20/ (Footnote Continued)

which expressly recognized the constitutional protection afforded "association for the advancement of beliefs and ideas." Id. at 460-61. These associational rights were, therefore, not a factor in the White Primary Cases.



were made in Ray v. Blair. In that case mandamus was sought against a state Democratic committee to require it to certify a candidate in the Democratic Party primary. The Party did not certify the candidate because he refused to subscribe to a party pledge. This Court stated:

The issue here ... is quite different from the power to punish criminal conduct in a primary [United States v. Classic] or to allow damages for wrongs to rights secured by the Constitution [Smith v. Allwright]. A state's or a political party's exclusion of candidates from a party primary because they will not pledge to support the party's nominees is a method of securing party candidates in the general election, pledged to the philosophy and leadership of that party.

...

The fact that the primary is a part of the election machinery is immaterial unless the requirement of pledge violates some constitutional or statutory provision. It was the

violation of a secured right  
that brought about the Classic  
and Allwright decisions. 343  
U.S. at 226-27. (emphasis  
added)./21/

In sum, this case is an internecine dispute between the Massachusetts Democratic Party and one of its displeased candidates. The reliance of Langone and Langone supporters upon the White Primary Cases and Classic is misplaced.

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/21/ The mere fact that a state regulates some aspects of an organization does not make its activities "state action." See, e.g., Jackson v. Metropolitan Edison Co., 419 U.S. 345 (1974). There must be a "sufficiently close nexus" between the challenged action and the state regulation. Id. at 351. The "nexus" between Massachusetts and the "fifteen percent rule" is tenuous at best. The Justices of the Supreme Judicial Court have opined that the state may not interfere with the operation and effect of the "fifteen percent rule." Opinion of the Justices, 385 Mass. 1201, 434 N.E.2d 960 (1982). Cf. Ripon Society v. National Republican Party, 525 F.2d 567, 575 (D.C. Cir. 1975) (en banc), cert. denied, 424 U.S. 933 (1976). The "fifteen percent rule" is not transmuted into "state action" by the decision of the State Secretary. Where initiative comes from a private party, as here, no "state action" is present. Jackson, supra, 419 U.S. at 357.

C.     LANGONE'S ALLEGED "RIGHT TO  
          RUN FOR PUBLIC OFFICE" AND  
          "RIGHT OF ACCESS TO THE  
          BALLOT" HAVE NOT BEEN VIOLATED

Langone alleges that he has been deprived of an alleged "right to run for public office" and an alleged "right of access to the ballot" in violation of the First Amendment. (Lang. Jur. St. at 28-29). A recent decision of this Court, Clements v. Fashing, 458 U.S. \_\_\_\_, 102 S.Ct. 2836 (1982) (plurality opinion), describes the nature of the alleged "right to run for public office:"

Far from recognizing candidacy as a "fundamental right", we have held that the existence of barriers to a candidate's access to the ballot "does not of itself compel close scrutiny." Bullock v. Carter, 405 U.S. 134, 143 (1972). 102 S. Ct. at 2843.

Assuming arguendo that "state action" is present, see supra, pp. 30-35, Langone's claims are appropriately subject to

standard equal protection analysis. As Mr. Justice Rehnquist noted: "This Court has departed from traditional equal protection analysis in recent years in two essentially separate, although similar, lines of ballot access cases." 102 S.Ct. at 2844.

Those "two lines" of "ballot access cases" are those in which there is an attempt to "exclude certain classes of candidates from the electoral process" either by classifications based on wealth<sup>/22/</sup> or "classification schemes that impose burdens on new or small political parties or independent candidates."<sup>/23/</sup>

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/22/ E.g., Lubin v. Panish, 415 U.S. 709 (1974) (indigent candidate, \$701.60 filing fee, no other means to primary ballot); Bullock v. Carter, supra, (candidate unable to pay \$8,900 filing fee, no alternative means to primary ballot).

/23/ E.g., Illinois Elections Bd. v. Socialist

(Footnote Continued)

Clearly, Langone's claims fall under neither the "wealth" or "new or small political parties or independent candidates" line of "ballot access cases." /24/

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/23/ (Footnote Continued)

Workers Party, 440 U.S. 173 (1979) ("no reason" to impose more stringent requirements on new political parties and independent candidates in Chicago city elections than in Cook County elections), American Party of Texas v. White, 415 U.S. 767 (1974) (only two major parties on absentee ballots; other restrictions upheld); Williams v. Rhodes, 393 U.S. 23 (1968) (signature requirements, early filing date, no provision for independent candidates, "invidiously discriminatory" against new political party).

When a new political party or an independent candidate is involved certain statutory schemes survive even "strict scrutiny." See, e.g., Storer v. Brown, 415 U.S. 724 (1974) (one year party disaffiliation requirement, party members disqualified from signing independent's petition); American Party of Texas v. White, *supra*, (different ballot access method); Jenness v. Fortson, 403 U.S. 431 (1971) (unanimous decision) (five percent of voters must sign independent's nominating petitions).

/24/ Were "strict scrutiny" appropriate here, a "less drastic means" analysis would be

(Footnote Continued)

As this Court held in Clements v. Fashing, "[i]n making an equal protection challenge, it is the claimant's burden to 'demonstrate in the first instance a discrimination against [him] of some substance.'" 102 S. Ct. at 2845. (quoting American Party of Texas v. White). This Court concluded: "Constitutional limitations arise only if the classification scheme is invidious

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/24/ (Footnote Continued)

appropriate to assess how the Party can achieve its goals. See Illinois Elections Bd., supra at 185-86. Langone and Langone supporters propose two allegedly less restrictive alternatives: "The party might require that only regular members of the party could sign nomination papers for primary candidates or that only regular party members could vote in the primary." (Lang. Jur. St. at 42-43).

Disenfranchising an entire class of voters, unenrolled party members, is not a less restrictive alternative. Both of the alternatives are also in direct conflict with existing state statutes. See Mass. Gen. Laws ch. 53, §§37, 46. (App. 28, 36).

or if the challenged provision significantly impairs interests protected by the First Amendment." 102 S.Ct. at 2848. (emphasis added).

Here, there is no invidious classification scheme.

More importantly, Langone's alleged "right to run for public office" was not impaired. Although his name did not appear upon the Democratic state primary ballots, Langone was still a candidate for Lieutenant Governor. He sought the nomination of the Massachusetts Democratic Party "by means of pasters or write-ins." Mass. Gen. Laws ch. 53, §§3, 35B and 40. (App. 23, 27, 33). If he had received write-in votes in an amount sufficient to give him a plurality of the votes cast in the primary, he would have been the Party's nominee. Mass. Gen. Laws. ch. 53, §§2, 40. (App. 22, 33).



Thus, the "fifteen percent rule" did not deny Langone his alleged "right to run for public office." /25/

It was Langone who chose to be a Democratic candidate. (Lang. Jur. St. at 17). He rejected alternative avenues of ballot access available to him. A candidate for Lieutenant Governor can secure a place on the election ballot, and obviate the need to run in the state primary, by filing nomination papers as an unenrolled or independent candidate. Mass. Gen. Laws ch. 53, §6. (App. 24). /26/ See Restivo

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/25/ The State Secretary also certified Langone for limited public financing. Mass. Gen. Laws ch. 55A, §2. (App. 46).

/26/ The number of nomination papers signatures required of an independent candidate is higher than that required of a political party candidate but this distinction is reasonable. See Socialist Workers Party v. Davoren, 374 F.Supp. 1245 (D. Mass. 1974) (construing Massachusetts statute). See also Jenness v. Fortson, supra.

v. Conservative Party, 391 F.Supp. 813, 818 (S.D.N.Y. 1975) (write-ins and independent candidacy makes ballot access restrictions "minimal restraints").

Whatever may be the status of Langone's alleged "right to run for public office" there simply "is no constitutional right to have one's name printed on the ballot." Beller v. Kirk, 328 F.Supp. 485, 486 (S.D. Fla. 1970) (three-judge court), aff'd sub nom., Beller v. Askew, 403 U.S. 925 (1971). Statutory restrictions more stringent than the "fifteen percent rule" have passed constitutional muster. See Tansley v. Grasso, 315 F.Supp. 513 (D. Conn. 1970) (three-judge court) (twenty percent).

In conclusion, Langone's alleged "right to run for public office" and

"right of access to the ballot" have not been violated. /27/

D.    LANGONE SUPPORTERS' ALLEGED  
      RIGHTS OF "FREEDOM OF ASSOCIA-  
      TION" HAVE NOT BEEN VIOLATED

Langone and Langone supporters allege that the "associational rights of voters generally have also been damaged by" the State Secretary's "refusal to place Langone's name upon the primary ballot." (Lang. Jur. St. at 29-31).

If Langone supporters, all registered voters (Lang. Jur. St. at 10),

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/27/ Langone also claims that his alleged rights of "freedom of political expression" and "freedom of association" have been violated. (Lang. Jur. St. at 28-29). Though the labels of the rights are different, the analysis is the same. See Developments in the Law-Elections, 88 Harv. L. Rev. 1111, 1176-77 (1975).

The names of five Massachusetts Democratic candidates for Lieutenant Governor appeared upon the Democratic state primary ballots. These candidates more than adequately represented the beliefs and ideas of the Party and safeguarded Langone's associational rights as a Massachusetts Democrat.

had enrolled as Democrats prior to December 31, 1981 they were free to attend the Democratic caucuses to attempt to elect delegates to the Endorsing Convention who supported Langone's candidacy, see supra pp. 17-18 & n.11. Although Langone's name did not appear upon primary ballots, his supporters were still able to cast write-in ballots for him. Mass. Gen. Laws ch. 53, §3. (App. 23). Surely, the "right to participate equally in the political process and to elect a candidate" "does not mean every voter can be assured that a candidate to his liking will be on the ballot." Lubin v. Panish, 415 U.S. 709, 716 (1974).<sup>/28/</sup>

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<sup>/28/</sup> The rights of voters are not absolute. "[A]lthough groups of voters have a right to associate and advance a candidate to represent their interests, these associational rights do not seem to require that any particular individual serve as that candidate." L. Tribe, American Constitutional Law at 775 (1978) (emphasis in original). See Developments in the Law-Elections, 88 Harv. L. Rev. 1111, 1177 (1975).

Any candidacy restriction burdens the right to vote in that it restricts the field of candidates and thus limits the voters' freedom of choice. However, restrictions affecting the right to vote must cause a discrimination "of some substance" before a constitutional right is violated. E.g., American Party of Texas v. White, 415 U.S. 767, 781 (1974).

Moreover, this Court has held that not every limitation or incidental burden on the exercise of voting rights is subject to a rigorous standard of review. Bullock v. Carter, 405 U.S. 134, 143 (1972). "The constitutional sensitivity is to denial of access to, or excessive burden upon, any identifiable classification of voters, not to a specific candidate or his supporters." Richards v. Lavelle, 483 F.Supp. 732, 735 (N.D. Ill.), aff'd 620 F.2d 144 (7th

Cir. 1980). Candidate eligibility requirements and ballot access restrictions do not trench upon fundamental rights unless they are so restrictive that they deny a cognizable group a meaningful right to representation. See L. Tribe, American Constitutional Law at 775. (1978).

Langone supporters are hardly an identifiable group viewed in constitutional terms. They cannot seriously claim to be the victims of invidious discrimination. The gravamen of their allegations is simply that the candidate of their choice was not also the choice of a sufficient number of delegates at the Endorsing Convention to deserve a place on the Democratic state primary ballots. A heightened standard of review is inappropriate in this case.

The Langone supporters' alleged

"associational rights of voters" were not violated.

E. IN LIGHT OF PREVIOUS DECISIONS  
OF THIS COURT THE APPEALS  
SHOULD BE DISMISSED

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The opinion explaining the Order and Judgment of the Supreme Judicial Court in this case can be expected to mirror the logic and reasoning of the Opinion of the Justices. In light of previous decisions of this Court, the Opinion of the Justices is correct. Therefore, the Order and Judgment in this case are correct. The appeals should be dismissed.

In assessing the constitutionality of restrictions on ballot access, this Court has administered a balancing test.<sup>/29/</sup> See, e.g., Illinois Elections Bd. v. Socialist Workers Party,

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<sup>/29/</sup> As previously stated, the presence of "state action" is assumed only arguendo.



440 U.S. 173 (1979). In this case the countervailing interests are the constitutionally-recognized associational rights of the Massachusetts Democratic Party and its adherents and the alleged rights of Langone and Langone supporters.

The Party's protected rights of political association have been recognized as fundamental, Illinois Elections Bd., supra, 440 U.S. at 184, and their presence in this case tips the balance heavily in favor of the "fifteen percent rule."

1. Party Interests

In the April 23, 1982 advisory opinion, the Justices of the Supreme Judicial Court recognized that:

'The [Massachusetts Democratic Party] and its adherents enjoy a constitutionally protected right of political association. "There can no longer be any doubt that freedom to associate with others for the common advancement of political

beliefs and ideas is a form of 'orderly group activity' protected by the First and Fourteenth Amendments. . . . The right to associate with the political party of one's choice is an integral part of this basic constitutional freedom." Kusper v. Pontikes, 414 U.S. 51, 56-57 (1973). . . . Moreover, "[a]ny interference with the freedom of a party is simultaneously an interference with the freedom of its adherents." Sweezy v. New Hampshire, 354 U.S. 234, 250 (1957); see NAACP v. Button, 371 U.S. 415, 431 (1963). " Cousins v. Wigoda, 419 U.S. 477, 487-488 (1975). "Freedom of association would prove an empty guarantee if associations could not limit control over their decisions to those who share the interests and persuasions that underlie the association's being." Democratic Party of U.S. v. Wisconsin, 450 U.S. 107, 122 n.22 (1981), quoting L. Tribe American Constitutional Law 791 (1978). A determination of who will appear on a general election ballot as the candidate endorsed by an identified political party is a critical decision for that party. The party, therefore, has a substantial interest, implicit in its freedom of association, to ensure that party members have

an effective role in that decision.' Democratic Party of U.S. v. Wisconsin, supra.

Opinion of the Justices, supra, 385

Mass. at 1204, 434 N.E.2d at 962.

In Democratic Party of the United States v. Wisconsin, this Court held that Wisconsin could not constitutionally compel the Democratic Party of the United States to seat delegates chosen in a manner that violated that Party's rules. States have important interests in regulating primary elections, 450 U.S. at 124 n.28 (citing United States v. Classic, 313 U.S. 299 (1941)), however, this Court held that those interests were insufficient to justify a substantial intrusion into the Party's ability to control its own destiny. 450 U.S. at 125-26.

The Party's legitimate interest in ensuring that Party members have an

effective role in determining who the Party's nominee will be is well-served by requiring as a precondition to Party primary ballot access that a candidate demonstrate a "significant modicum of support", Jenness v. Fortson, 403 U.S. 431, 442 (1971), within the party organization. Cf. Clark v. Rose, 379 F.Supp. 73 (S.D.N.Y. 1974), aff'd, 531 F.2d 56 (2d Cir. 1976).

Absent the "fifteen percent rule", to be placed upon the Democratic state primary ballots a candidate need only be an enrolled Democrat and submit nomination papers signed by 10,000 persons, none of whom need be enrolled Democrats. Mass. Gen. Laws. ch. 53, §§46, 48. (App. 36, 38). Voting in party primaries is not limited to party members but includes unenrolled voters who enroll at the polls before receiving ballots.

Mass. Gen. Laws. ch. 53, §37.<sup>/30/</sup>  
(App. 28). Furthermore, voters may  
cancel or change their party regis-  
tration immediately after voting. Mass.  
Gen. Laws ch. 53, §38. (App. 30).  
Thus, without the "fifteen percent  
rule", a candidate could be placed upon  
the Democratic state primary ballots and  
win the primary with little or no support  
from the Party membership. Opinion of  
the Justices, supra, 385 Mass. at 1205,  
434 N.E.2d at 962.

In Rodriguez v. Popular Democra-  
tic Party, 457 U.S. \_\_\_, 102 S. Ct.  
2194 (1982), this Court upheld a Puerto  
Rico statute which vested in a political  
party the authority to appoint an in-

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<sup>/30/</sup> "As of February, 1980, 39.9% of all re-  
gistered voters in the Commonwealth were  
unenrolled." Opinion of the Justices,  
supra, 385 Mass. at 1205 n.1, 434 N.E.2d at  
962 n.1 (citation omitted).

terim replacement for one of its members who vacates an elected office. Since the statute did not restrict access to the electoral process or afford unequal treatment to different classes of voters or political parties it survived constitutional scrutiny. "The Party was entitled to adopt its own procedures to select this replacement; it was not required to include non-members in what can be analogized to a party primary election." 102 S.Ct. at 2202./31/

"What is important...is that a party's choice, as among various ways of governing itself, of the one which seems best calculated to strengthen the party and advance its interests, deserves the

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/31/ Rodriguez involved a statute. The "fifteen percent rule" is a Party Charter provision. This distinction, however, should weigh in favor of, rather than against, its enforcement. See L. Tribe, American Constitutional Law, 790 n.2 (1978).

protection of the Constitution as much if not more than its condemnation." Ripon Society v. National Republican Party, supra, p. 35 n.21, 525 F.2d at 585 (emphasis original).

"The rights of members of a political party to gather in. . . convention in order to formulate proposed programs and nominate candidates for political office is at the very heart of the freedom of assembly and association. . . ." Cousins v. Wigoda, 419 U.S. 477, 491 (Rehnquist, J., concurring).

In sum, recent decisions of this Court reveal the tremendous deference that must be accorded associational rights of political parties.

## 2. State Interests

This is a private contest between the Massachusetts Democratic Party and Langone and Langone supporters. However,



the interests of the Commonwealth are relevant and they should be weighed in the balancing test. As argued below, the "fifteen percent rule" fosters several state interests, further tipping the balance in its favor.

The "fifteen percent rule" "has the double effect of limiting the number of candidates on the primary ballot, thereby eliminating the confusion that may result from too many candidates, and of limiting the candidates to those with significant party support, thereby giving the party members an effective role in choosing the party's candidate in the general election." Opinion of the Justices, supra, 385 Mass. at 1205, 434 N.E.2d at 962.

A state has a compelling interest in limiting the number of candidates in order to prevent voter confusion.

American Party of Texas v. White, 415 U.S. 767, 782 n.14 (1974). A political party has a parallel interest. Opinion of the Justices, supra, 385 Mass. at 1206, 434 N.E.2d at 963. The "fifteen percent rule" serves these interests. "Elimination of the Democratic party charter requirement could only increase the number of candidates on the primary ballot, with a resulting increased potential for voter confusion." Opinion of the Justices, supra, 385 Mass. at 1206, 434 N.E.2d at 963.

There is another recognized state interest: assuring that the winner is the choice of a majority, or at least a strong plurality, of those voting.

Bullock v. Carter, 405 U.S. 134, 145 (1972).<sup>/32/</sup> The winner by a plurality

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<sup>/32/</sup> Langone and Langone supporters take the indefensible position that this state  
(Footnote Continued)

of the Democratic primary becomes the Democratic Party nominee at the general election. Mass. Gen. Laws ch. 53, §2. (App. 22). If Langone and Pressman were named upon the state Democratic primary ballots there would have been seven candidates. The chances of a candidate who would not garner a majority, or at least a strong plurality, of the votes cast winning the primary would have been increased.

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/32/ (Footnote continued)

interest "is only at stake in the context of primary elections [sic] where there is the prospect of runoff elections which would clog a state's electoral machinery" and that, since Massachusetts law does not provide for a runoff, this state interest is not present. (Lang. Jur. St. at 38-39). Bullock v. Carter, supra, provides no support for this position. In Bullock this Court recognized that ballot access restrictions serve recognized state interests which may include avoiding the "expense and burden of runoff elections." 405 U.S. at 145. The fact that there can be no runoff in Massachusetts buttresses its interest in limiting access to the primary ballot.

Because the state has legitimate reasons for limiting access to the ballot, it may require "some preliminary showing of a significant modicum of support" before printing a candidate's name on the ballot. Jenness v. Fortson, 403 U.S. 431, 442 (1971). The "fifteen percent rule" promotes this interest by identifying those candidates with at least a prescribed minimum level of Party support./33/

The "fifteen percent rule" also furthers the state's compelling interest

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/33/ In Restivo v. Conservative Party of New York, 391 F.Supp. 813 (S.D.N.Y. 1975), a statute required a non-party member to obtain party committee authorization to receive the party's nomination or to run in its primary. In upholding the statute, the court observed that the party committee "may be trusted to determine which of several competing non-member aspirants for party nomination can advance the political philosophy of the Party members to best advantage." 391 F.Supp. at 818. See Clark v. Rose, 379 F.Supp. 73 (S.D.N.Y. 1974), aff'd, 531 F.2d 56 (2d Cir. 1976).

in preserving the integrity of the electoral process, Rosario v. Rockefeller, 410 U.S. 752, 761 (1973), by insuring that candidates representing themselves as Democrats support the ideals and goals of the Democratic Party and its membership.

Undeniably, the "fifteen percent rule" derives further support from the Commonwealth's interests.

### 3. Conclusion

The Massachusetts Democratic Party has made a reasonable choice of how it desires to signal its endorsement and support of its statewide candidates. That choice was respected by the Supreme Judicial Court in light of the previous decisions of this Court.

The appeals should be dismissed.

III. LANGONE'S CLAIM THAT HE DID NOT  
RECEIVE FAIR NOTICE OF THE EFFECT  
OF THE FIFTEEN PERCENT RULE IS  
WITHOUT MERIT

Langone claims that he did not receive fair notice of the ballot access requirements applied to Democratic candidates.<sup>/34/</sup> He alleges that, prior to April 24, 1982, he believed that the "fifteen percent rule" was not a condition for securing a position on the Democratic state primary ballots. (Lang. Jur. St. at 50). On the facts of

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<sup>/34/</sup> The "fair notice" claim is moot. The 1982 primary and general election are history. It is impossible to grant Langone and Langone supporters the relief they sought from the Massachusetts courts. See Brockington v. Rhodes, 396 U.S. 41, 43-44 (1969) (per curiam); Hall v. Beals, 396 U.S. 45, 47-48 (1969) (per curiam). Moreover, all prospective Democratic candidates, including Langone, can no longer claim ignorance of the "fifteen percent rule" and, consequently, Langone's "fair notice" claim is not "capable of repetition." Cf. Rosario v. Rockefeller, 410 U.S. 752, 756 n.5 (1973) (question is "'capable of repetition, yet evading review'").

this case, Langone's claim is transparent.

The record states that, at a public meeting of the Democratic State Committee held on November 7, 1981, the Committee Chairman announced that the "fifteen percent rule" was in effect. The preliminary "Call to Convention" mailed in December, 1981 included a copy of the Party Charter with the "fifteen percent rule" as Article Six, Section III.

Langone had notice of the controversy surrounding the "fifteen percent rule", and its effect, almost from the inception of his candidacy. He announced on March 29, 1982. Langone was sent a copy of an announcement released by the State Secretary on April 9, 1982 which informed Langone that the Governor had requested the advisory opinions of the Justices. All candidates were invited



to file briefs with respect to the  
question of the "fifteen percent rule."  
Langone did not accept this invitation.

On April 23, 1982, the Justices rendered their opinions. On April 29, 1982, the State Secretary publicly announced that, in view of the Opinion of the Justices, the "ballot status" of statewide Democratic candidates is "undetermined."

The "Rules of the 1982 Massachusetts Democratic Convention" required that candidates file a statement regarding their support of the platforms and the Party Charter. Langone filed his statement with the Democratic State Committee on May 4, 1982. Langone's statement reveals that he knew that access to primary ballots would be determined by the vote of the Endorsing Convention.

Langone's actions at the Convention provide still further evidence of his understanding regarding the effect of the "fifteen percent rule." He admits that he made strenuous efforts to acquire fifteen percent of the delegate vote.

At the Endorsing Convention the "fifteen percent rule" was the subject of two proposed amendments. An amendment presented to the Convention to delete the "fifteen percent rule" and a second amendment, which would have postponed its effective date to January 1, 1983, were easily defeated.

Until Langone filed his nomination papers with the State Secretary on May 26, 1982, the State Secretary did not know that Langone was a candidate. As soon as he filed, Langone was notified that his name would not appear upon the Democratic state primary ballots.

The import of the facts contained in the record is that the State Secretary endeavored at all times to keep all candidates fully informed and that, in particular, he gave Langone the best notice practicable at the earliest date possible./35/

#### IV. CONCLUSION

For all of the foregoing reasons, appellee Michael J. Connolly, as he is Secretary of State of the Commonwealth

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/35/ The cases cited by Langone and Langone supporters are easily distinguished. Kay v. Mills, 490 F.Supp. 844 (E.D. Ky. 1980), was decided on "void for vagueness" grounds. There is no similar claim here. Briscoe v. Kusper, 435 F.2d 1046 (7th Cir. 1970), and Williams v. Sciafani, 444 F.Supp. 906 (S.D.N.Y.), aff'd without opinion, 580 F.2d 1046 (2d Cir. 1978), stand for the proposition that, where a candidate justifiably relied on a state-adopted custom or practice, the state may not depart from it without giving prior notice to the candidate. There was never any custom or practice of ignoring the "fifteen percent rule." Rather, the "fifteen percent rule" was enforced by the Massachusetts Democratic Party and given effect by the State Secretary at the first opportunity.

of Massachusetts, moves this Court to dismiss the appeals in the above-entitled case or, in the alternative, to deny appellants' requests for review by writs of certiorari.

Respectfully submitted,

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Michael J. Connolly,  
As He Is Secretary  
of State of the  
Commonwealth of  
Massachusetts

January 5, 1983

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

SUPREME JUDICIAL  
COURT FOR SUFFOLK  
COUNTY NO.

\* \* \* \* \*

FREDERICK C. LANGONE, et al.,

Plaintiffs,

FRANCIS X. BELLOTTI, as he  
is the Attorney General of  
the Commonwealth of  
Massachusetts,

Plaintiff-  
Intervenor,

v.

MICHAEL J. CONNOLLY, as he  
is the Secretary of the  
Commonwealth of  
Massachusetts, et al.,

Defendants.

\* \* \* \* \*

PETITION FOR TRANSFER

Pursuant to G.L. c.211, §4A, the  
undersigned parties to the above-  
captioned action pending in the Superior

Court Department for Suffolk County  
(Civil Action No. 55255) petition for  
the transfer of the action to this Court  
and state the following reasons:

1. The complaints in this action  
present the question of whether candidates  
for nomination to statewide office must  
be placed on the ballot of a state  
primary for the Democratic Party upon  
compliance with all statutory require-  
ments for nomination despite the failure  
to receive fifteen percent of the vote  
of the party convention as arguably  
required by Article Six, Section III of  
the "Charter of the Democratic Party of  
the Commonwealth."

2. The Justices of the Supreme  
Judicial Court referred to and discussed  
Article Six, Section III of the "Charter  
of the Democratic Party of the Common-  
wealth" ("fifteen percent rule") in its

Opinion of the Justices, 385 Mass. 1201 (1982).

All parties hereto pray that this Court declare the rights, duties, status and other legal relations of all parties hereto under the "fifteen percent rule" and G.L. c.52 and 53.

3. In reliance upon said Article Six, Section III and said Opinion of the Justices, the Secretary of State of the Commonwealth decided not to place upon the state primary ballot of the Democratic Party those candidates who did not receive fifteen percent of the convention vote. Plaintiffs in the above-captioned action were each notified by the Director of Elections, by separate letters dated May 26, 1982, that their names would not be placed on the Democratic state primary ballots. This action was commenced in the Superior



Court Department against the Secretary of State bringing into issue the validity and enforcement of the "fifteen percent rule". All parties necessary for the entry of a declaratory judgment to resolve these issues have been joined in this action.

4. The Attorney General of Massachusetts has declined to represent the Secretary of State in this action, and has intervened as a party plaintiff to obtain, in an adversarial context with an appropriate record, a judicial determination of the validity and enforcement of the "fifteen percent rule". (A photostatic copy of the pleadings filed to date in this action are attached hereto.)

5. An actual controversy has arisen and presently exists among all parties hereto concerning the "fifteen

percent rule" and the preparation and provision of the Democratic state primary ballots by the Secretary of State.

6. A prompt declaration of the rights, duties, status and other legal relations of all parties hereto is necessary to prevent voter confusion, to avoid unnecessary interference with the campaigns of the Democratic party candidates, and to allow adequate time to print (and to mail to absentee voters) ballots for the Democratic party state primary. Said ballots must be prepared on or before July 9, 1982.

Accordingly, the transfer of this action, in anticipation of the reservation and report to the Supreme Judicial Court, and an order requiring the completion of the pleadings and the submission of a Statement of Agreed Facts

on or before June 16, 1982 is appropriate.

Thereupon, the reservation and report of this action to the Supreme Judicial Court and a simultaneous filing of briefs on or before June 25, 1982, will facilitate and expedite a prompt judicial resolution.

The parties agree to expedite discovery should that necessity occur.

MICHAEL J. CONNOLLY,  
AS HE IS SECRETARY  
OF STATE OF THE  
COMMONWEALTH OF  
MASSACHUSETTS

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---

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Dated: June 10, 1982

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT  
NO. 82-214-Civil

---

FREDERICK C. LANGONE, et al.,

Plaintiffs,

v.

MICHAEL J. CONNOLLY, et al.,

Defendants.

---

RESERVATION AND REPORT

I reserve and report to the Supreme Judicial Court for the Commonwealth the following questions of law presented by the above-entitled action:

1. Whether all candidates who have complied with applicable statutory requirements must appear upon the Democratic state primary ballots, notwithstanding the failure to

obtain at least fifteen percent of the vote on any ballot of the Democratic Convention pursuant to Article Six, Section III of the "Charter of the Democratic Party of the Commonwealth"?

2. Whether the decision by the Secretary of the Commonwealth that he will not place upon the Democratic state primary ballots those candidates who failed to obtain at least fifteen percent of the vote on any ballot of the Democratic Convention pursuant to Article Six, Section III of the "Charter of the Democratic Party of the Commonwealth", but otherwise complied with the statutory requirements to have their names placed upon the ballots violated the constitutional or statutory rights of the voters, the candidate, or their supporters?

The foregoing questions of law are reserved and reported upon the Complaint, the Complaint of the Attorney General, the Answer and Counterclaim of the Secretary, and the Statement of Agreed Facts executed by the parties, including attachments annexed. The following schedule will be observed by the parties:

(1) The briefs of each party will be filed on June 25, 1982.

(2) The matter is set down for hearing by the full court on June 29, 1982.

/s/ Paul J. Liacos  
Associate Justice

DATED: June 18, 1982



COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT FOR THE COMMONWEALTH

SJC-2889

At Boston,  
July 6, 1982

Frederick C. Langone et al.

vs.

Secretary of the Commonwealth et al.

Order

On June 18, 1982, the Single Justice reserved and reported the following questions of law presented by this action: "1. Whether all candidates who have complied with applicable statutory requirements must appear upon the Democratic state primary ballots, notwithstanding the failure to obtain at least fifteen percent of the vote on any ballot of the Democratic Convention pursuant to Article Six, Section III of

the 'Charter of the Democratic Party of the Commonwealth'? 2. Whether the decision by the Secretary of the Commonwealth that he will not place upon the Democratic state primary ballots those candidates who failed to obtain at least fifteen percent of the vote on any ballot of the Democratic Convention pursuant to Article Six, Section III of the 'Charter of the Democratic Party of the Commonwealth', but otherwise complied with the statutory requirements to have their names placed upon the ballots violated the constitutional or statutory rights of the voters, the candidate, or their supporters?"

Upon consideration of the argument and briefs of the parties, we interpret the State statutes in light of the State and Federal constitutions and rule that the Secretary must give effect to the relevant charter provision. Accordingly, we answer the questions reported, "no."

A rescript will issue forthwith  
with an opinion or opinions to follow.

By the Court,

/s/ Frederick J. Quinlan

Frederick J. Quinlan

Assistant Clerk

Entered: July 6, 1982

COMMONWEALTH OF MASSACHUSETTS

Supreme Judicial Court for the Commonwealth

At Boston,

July 6, 1982

In the Case No. SJC 2889

FREDERICK C. LANGONE & others

vs.

SECRETARY OF THE COMMONWEALTH & others  
pending in the Supreme Judicial Court  
Court for the County of Suffolk No.  
82-214 Civ.

ORDERED, that the following entry  
be made in the docket; viz., --

The reported questions are answered  
"No."

By The Court,

/s/ FREDERICK J. QUINLAN,

Asst. Clerk

July 6, 1982

COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT  
FOR SUFFOLK COUNTY

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FREDERICK C. LANGONE, et al,

Plaintiffs

v.

MICHAEL J. CONNOLLY, et al,

Defendants

---

JUDGMENT

This matter came on before the Court, O'Connor, J., presiding, on the rescript issued by the Supreme Judicial Court for the Commonwealth and entered in this Court,

It is Ordered and Adjudged as follows:

1. Candidates who have complied with applicable statutory requirements need not appear upon the Democratic

state primary ballots if they failed to obtain at least fifteen percent of the vote on any ballot of the Democratic Convention pursuant to Article Six, Section III of the 'Charter of the Democratic Party of the Commonwealth.'

2. The decision by the Secretary of the Commonwealth that he will not place upon the Democratic state primary ballots those candidates who failed to obtain at least fifteen percent of the vote on any ballot of the Democratic Convention pursuant to Article Six, Section III of the 'Charter of the Democratic Party of the Commonwealth,' but otherwise complied with the statutory requirements to have their names placed upon the ballots did not violate the constitutional or statutory rights of the voters, the candidates, or their supporters.

Dated at Boston, Massachusetts,  
this 7th day of July, 1982.

/s/ John E. Powers  
Clerk of Court

A true copy.

Attest:

7/7/82  
Date

/s/ John E. Powers  
Clerk



Terms used in chapters fifty to fifty-seven, inclusive, shall be construed as follows, unless a contrary intention clearly appears:

. . .

Political Committee. - "Political committee" shall apply only to a committee elected as provided in chapter fifty-two, except that in chapter fifty-five it shall also apply, subject to the exception contained in section twenty-nine thereof, to every other committee or combination of five or more voters of the commonwealth who shall aid or promote the success or defeat of a candidate at a primary or election or the success or defeat of a political party or principle in a public election or shall favor or oppose the adoption or rejection of a question submitted to the voters.

. . .

Political Party. - "Political party" shall apply to a party which at the preceding biennial state election polled for governor at least three per cent of the entire vote cast in the commonwealth for that office; but when a candidate for governor receives two or more nominations for that office "political party" shall apply only to a party which made a nomination at the preceding state primary and which in said primary polled at least three per cent of the entire vote for nomination for governor therein cast in the commonwealth. With reference to municipal elections and primaries and caucuses for the nomina-

tion of city and town officers, "political party" shall include a municipal party. A political party, as used in this section, shall not include any organization which has been adjudicated subversive under section eighteen of chapter two hundred and sixty-four, nor shall it include the Communist Party.

. . .

Primary. - "Primary" shall apply to a joint meeting of political or municipal parties held under the laws relating to primaries.

. . .

State Election. - "State election" shall apply to any election at which a national, state, or county officer is to be chosen by the voters, whether for a full term or for the filling of a vacancy.

. . .

Two Leading Political Parties. - "Two leading political parties" shall apply to the political parties which elected the highest and next highest number of members of the general court at the preceding biennial state election.

Mass. Gen. Laws ch.52, §1. State Committees; Election, Terms, etc.

Each political party shall, in the manner herein provided, elect a state committee from among its members, enrolled on or before the ninetieth day prior to the last day for filing nomina-

tion papers for state committees with the state secretary. Each state committee shall consist of one man and one woman from each senatorial district, who shall be residents thereof, to be elected at the presidential primaries by plurality vote of the members of the party in the district, and such number of members as may be elected by the state committee as hereinafter provided. Members of said committee elected at the presidential primaries from senatorial districts shall hold office for a period of four years from the thirtieth day next following their election; provided that members of said committee elected in nineteen hundred and seventy-six shall hold office for a period beginning May fifteenth, nineteen hundred and seventy-six and ending on the thirtieth day following the day on which presidential primaries are next held. Members elected by the state committee shall hold office for two years from the date of their election; provided, however, that in no event shall the terms of office of such members extend beyond the term of office of members who were elected at the presidential primaries.

The members of the state committee elected at the presidential primaries shall within ten days after the thirtieth day next following their election, meet and organize by the choice of a chairman, a secretary, a treasurer and such other officers as they may decide to elect; provided that members of said committee elected in nineteen hundred and seventy-six shall meet and organize within ten days after May fifteenth, nineteen hundred and seventy-six; and provided,

further, that the members of the committee shall first meet and organize temporarily by the choice of a temporary chairman and a temporary secretary who shall serve until a permanent chairman and a permanent secretary are chosen, and such committee, while temporarily organized or at any time after its permanent organization, may add to its membership.

The secretary of the state committee shall file with the state secretary, and send to each city and town committee, within ten days after such permanent organization, a list of the members of the state committee and of its officers, and, within ten days after each addition to its membership made subsequently to its permanent organization, a list of the members so added.

A vacancy in the office of chairman, secretary or treasurer of the state committee or in the membership thereof shall be filled by said committee, and a statement of any such change shall be filed as in the case of the officers first chosen.

§10. Committees May Make Rules and Regulations, etc.

A state, city or town committee may make rules and regulations consistent with law, for its proceedings, and a state committee may make rules and regulations, consistent with law, for calling conventions.

At any primary, caucus or convention held under this chapter, each party having the right to participate in or hold the same may nominate as many candidates for each office for which it has the right to make nominations therein as there are persons to be elected to that office, and no more. A party which makes one or more nominations shall be entitled to have the name of each of its candidates printed on the ballot to be used at the ensuing election; but, unless the nomination is made by direct plurality vote in a primary or in several caucuses held in more than one ward or in more than one precinct or group of precincts, a certificate of nomination must be filed as provided in section five.

. . .

§2.      Nominations, How Made.

Except in the case of municipal nominations where a city charter or a law applying specially to a particular town otherwise provides, candidates of political parties for all elective offices, except presidential elector, shall be nominated and members of political committees, except as provided in sections one and four of chapter fifty-two, shall be elected, in primaries or caucuses, and the nomination of any party other than a political party, in any district containing more than one ward or town, shall be made by a convention of delegates chosen by caucuses

held under section one hundred and seventeen in the wards and towns of the district for which the nomination is to be made. All nominations and elections in primaries and caucuses shall be by direct plurality vote. No candidates shall be nominated, and no member of a political committee or convention delegate elected, in any other manner than is provided in this chapter or chapter fifty-two.

. . .

§3. Candidate Whose Name is Not Printed on Primary Ballot Must Accept Nomination to Have Name Printed on Election Ballot.

A person whose name is not printed on a state primary ballot as a candidate for an office, but who receives sufficient votes to nominate him therefor, shall, within thirteen days following five o'clock post meridian on the day said primary was held, file in the office of the state secretary a written acceptance of said nomination and a receipt from the state ethics commission verifying the fact that a statement of financial interest has been filed under chapter two hundred and sixty-eight B. A person whose name is not printed on a city or town primary ballot, but who receives sufficient votes to nominate him, shall, within six days from the aforementioned time and day, file a written acceptance of said nomination in the office of the city or town clerk. The name of any such person who fails to file such written acceptance, and such receipt if required, shall not be printed on the



official ballot to be used at the ensuing election. When such acceptance has been filed, it may not thereafter be withdrawn. This section shall be construed to provide that written acceptance of such a nomination at a primary shall be filed as aforesaid within the time herein limited, by any such person whose nomination is finally determined after the expiration of the time so limited, otherwise his name shall not be printed on the ballot at the ensuing election.

§6. Nomination Papers, Contents, Number of Signatures.

Nominations of Candidates for any offices to be filled at a state election. may be made by nomination papers, stating the facts required by section eight and signed in the aggregate by not less than such number of voters as will equal two per cent of the entire vote cast for governor at the preceding biennial state election in the commonwealth at large or in the electoral district or division for which the officers are to be elected; provided, however, that in no event shall the number of signatures required be less than the number required of the candidate of a political party for the same office in the same electoral district or division to have his name placed on the primary ballot as provided for under section forty-four. If in any electoral district or division the aggregate number of signatures required cannot be calculated due to changes in districts or in precinct or ward lines used in the first election after any redistricting, the aggregate number



shall be twice the number required for the office under section forty-four. In the case of the offices of governor and lieutenant governor, only nomination papers containing the names and addresses of candidates for both offices shall be valid. Nominations of candidates for offices to be filled at a city or town election, except where city charters or general or special laws provide otherwise, may be made by like nomination papers, signed in the aggregate by not less than such number of voters as will equal one per cent of the entire vote cast for governor at the preceding biennial state election in the electoral district or division for which the officers are to be elected, but in no event by less than twenty voters in the case of an office to be filled at a town election; provided, however, that no more than fifty signatures of voters shall be required on nomination papers for such town office. At a first election to be held in a newly established ward, the number of signatures of voters upon a nomination paper of a candidate who is to be voted for only in such ward shall be at least fifty.

No person may be nominated as an unenrolled candidate for any office to be filled at a state election, or a city or town election following a primary, if he has been enrolled as a member of a political party, as defined in section one of chapter fifty, during the ninety days prior to the last day for filing nomination papers as provided in section ten.

§9. Certificates of Nomination and  
Nomination Papers, Contents, Party  
Designations, Etc.; Filing, Acceptance.

Certificates of nomination and nomination papers for state offices shall be filed with the state secretary and he shall forthwith issue to the candidate or other person filing the same a certificate acknowledging the time and date of the receipt thereof. Certificates of nomination or nomination papers for city and town offices shall be filed with the city or town clerk. Any candidate not required by section forty-eight of this chapter to file a certificate of party enrollment shall, on or before the last day provided by law for filing nomination papers, file a certificate from the registrars of voters of the city or town wherein such candidate is a registered voter, certifying that such candidate is a registered voter in such city or town. Said registrars shall issue such a certificate forthwith upon request of any such candidate so registered or of his authorized representative. No nomination paper shall be received or be valid unless the written acceptance of the candidate thereby nominated shall be filed therewith. No nomination paper or certificate of nomination of a candidate for public office, as defined by chapter 268B, shall be accepted by the state secretary nor be valid unless accompanied by a receipt from the state ethics commission verifying the fact that a statement of financial interest has been filed pursuant to the provisions of said chapter 268B.

§13. Withdrawal of Names of Candidates.

A person nominated as a candidate for any state, city or town office may withdraw his name from nomination by a request signed and duly acknowledged by him before a notary public, and filed with the officer with whom the nomination was filed, within the time prescribed by section eleven for filing objections to certificates of nomination and nomination papers and no such requests for withdrawals shall be received after such time has expired. This section shall be in force in any city or town which accepts section one hundred and three A of chapter fifty-four, any special provision of law to the contrary notwithstanding.

§25. Withdrawal of Candidates.

Withdrawals of nominations of persons to be voted for at primaries shall be subject to section thirteen, except that the date from which the time for filing withdrawals shall be computed shall be the last day for filing nomination papers for such primaries, and that the time shall be forty-eight hours in the case of a town primary.

§35B. Notification of Nominee Whose Name Did Not Appear on Printed Ballot of Necessity of Acceptance.

The city or town clerk shall forthwith notify a person who appears to have been nominated by means of pasters or write-ins of the necessity of complying with section three.

§37. Party Enrolment of Voters.

The voting lists used at primaries shall contain the party enrollment of the voters whose names appear thereon established as provided in this section, in section thirty-eight, and in section forty-four of chapter fifty-one. Except as provided by section thirty-seven A, a voter desiring to vote in a primary shall give his name, and, if requested, his residence, to one of the ballot clerks, who shall distinctly announce the same, and, if the party enrolment of such voter is shown on the voting list, the name of the party in which he is enrolled. If the party enrolment of the voter is not shown on the voting list he shall be asked by the ballot clerk with which political party he desires to be enrolled, and the ballot clerk, upon reply, shall distinctly announce the name of such political party and shall record the voter's selection upon the voting list. The ballot clerk shall then give the voter one ballot of the political party in which he is thus enrolled.

After marking his ballot the voter shall give his name, and, if requested, his residence, to the officer in charge of the voting list at the ballot box, who shall distinctly announce the same. If the party enrolment of the voter is shown on the voting list he shall also make announcement of such enrolment and the officer in charge of the ballot box shall, before the voter's ballot is deposited, ascertain that it is of the political party in which such voter is enrolled. If the enrolment of the voter

is not shown on such voting list, the officer in charge of the ballot box shall announce the political party whose ballot the voter is about to deposit, and the officer in charge of the voting list shall repeat the same distinctly and record the same upon such voting list.

The voting lists used at primaries shall be returned to the city or town clerk to be retained in his custody as long as he retains the ballots cast, whereupon such voting lists shall be transmitted to the registrars of voters for preservation for two years, after the expiration of which they may be destroyed. Said officers shall, at any time after the primary, upon receiving a written request therefor signed by any person, furnish a copy of said list to such person upon the payment of a reasonable fee or shall allow such person to examine and copy such list without charge under such supervision as the clerk may reasonably require. The party enrolment of each voter, if any, shall be recorded in the current annual register of voters, and whenever a voter shall establish, cancel or change his enrolment it shall likewise be so recorded. In preparing the current annual register of voters, the party enrolment, if any, of each voter included therein, as shown by the register of voters for the preceding year, shall be transferred thereto. Upon receipt of a written request from a primary candidate or any officer of any ward, town or city committee or duly organized political committee for a copy of the party enrolment list of voters in any city or town, the board of registrars

or the election commissioners, as the case may be, shall prepare said list and shall furnish at once the said list, free of charge, to the party requesting the same and they shall also furnish a copy of said list to any person on payment of a reasonable fee, not to exceed the cost of printing such list.

§38. Voters Enrolled in One Political Party Not to Receive Ballot of Another Political Party, Except etc.

No voter enrolled under this section or section thirty-seven shall be allowed to receive the ballot of any political party except that with which he is so enrolled; but, except as otherwise provided by said section thirty-seven, a voter may, except within a period beginning at ten o'clock in the evening of the twenty-eighth day prior to a state or presidential primary or the twentieth day prior to a special state primary or city or town primary and ending with the day of such primary, establish, change or cancel his enrolment by forwarding to the board of registrars of voters a certificate signed by such voter under the pains and penalties of perjury, requesting to have his enrolment established with a party, changed to another party, or cancelled, or by appearing in person before a member of said board and requesting in writing that his enrolment be so established, changed or cancelled. The processing of an absentee ballot to be used at a primary shall also be deemed to establish the enrolment of a voter in a political party, effective as of the date of said processing. Except as



otherwise provided in section twelve of chapter four, sections one and two of chapter fifty-two, sections twenty-six, forty A and forty-eight of this chapter, such enrollment, change or cancellation shall take effect forthwith following the receipt by said board of such certificate, or such appearance, as the case may be; provided, however, that no such enrollment, change or cancellation shall take effect for a state or presidential primary during the twenty-eight days prior to that primary or for a special state primary or city or town primary during the twenty days prior to that primary. No voter enrolled as a member of one political party shall be allowed to receive the ballot of any other political party, upon a claim by him of erroneous enrolment, except upon a certificate of such error from the registrars, which shall be presented to the presiding officer of the primary and shall be attached to, and considered a part of the voting list and returned and preserved therewith; but the political party enrolment of a voter shall not preclude him from receiving at a city or town primary the ballot of any municipal party, though in no one primary shall he receive more than one party ballot.

At primaries the city or town clerk shall make available within the polling place certificates to enable a voter to change his party enrollment, which shall be in substantially the following form:

Name \_\_\_\_\_  
(Print)

Date \_\_\_\_\_

Address \_\_\_\_\_

I hereby request that my political party  
enrollment be changed as follows:

From: \_\_\_\_\_  
(Name of party or Unenrolled)

To: \_\_\_\_\_  
(Name of party or Unenrolled)

Signed under the pains and penalties of  
perjury.

\_\_\_\_\_  
(Signature)

On the same day as he casts his ballot, the voter may transmit the certificate to the city or town clerk, who shall transmit them as soon as possible after the primary to the board of registrars, to be retained in their custody. The party enrolment of each voter shall be recorded in the current annual register of voters, and whenever a voter shall establish, cancel or change his enrolment it shall likewise be so recorded.

Said board shall forthwith notify each voter transmitting any such certificate that the same has been received and that his enrolment has been established, changed or cancelled in accordance with his request or that said certificate is void and of no effect, if such be the case.



§40. Number of Votes Needed to Nominate  
by Pastors, etc.

No person who is a candidate at a primary for nomination for or election to a political office, and whose name is not printed on the ballot therefor, shall be deemed to be nominated or elected unless he receives a number of votes at least equal to the number of signatures which would be required by law to place his name on the ballot at such primary as a candidate as aforesaid.

§44. Nomination Papers, Number of  
Signatures.

The nomination of candidates for nomination at state primaries shall be by nomination papers. In the case of the governor, lieutenant-governor, attorney general and United States senator, nomination papers shall be signed in the aggregate by at least ten thousand voters; in the case of the state secretary, state treasurer and state auditor, they shall be signed by at least five thousand voters. Such papers for all other offices to be filled at a state election shall be signed by a number of voters as follows: for representative in congress, two thousand voters; for councillor, district attorney, clerk of courts, register of probate, register of deeds, county commissioner, sheriff and county treasurer, one thousand voters, except that in Barnstable, Berkshire, Franklin, and Hampshire counties such papers for nomination to the office of clerk of courts, register of probate, register of deeds, county commissioner, sheriff and

county treasurer shall be signed by five hundred voters; for state senator, three hundred voters; for representative in the general court and commissioners to apportion Suffolk county, one hundred and fifty voters. If ten per cent of the number of voters in the respective district who are enrolled in the party whose nomination the candidate seeks is a lesser number than the number otherwise required by the preceding sentence, then the number of voters required shall be such ten percent or shall be fifty per cent of the number of voters otherwise required by the preceding sentence, whichever is greater.

§45. Nomination Papers; Contents, Qualifications of Signers, Acceptance, Number of Candidates; Penalty for False Statement.

Every nomination paper shall state in addition to the name of a candidate, (1) his residence, with street and number thereof, if any, (2) the office for which he is nominated, and (3) the political party whose nomination he seeks. This information, in addition to the district name or number, if any, shall be stated on the nomination papers before any signature of a purported registered voter is obtained and the circulation of nomination papers without such information is prohibited. The candidate may state, on one or more nomination papers, in not more than eight words, any of the following public offices which he holds or has held: those offices which are voted for at state primaries, mayor, city councillor, alderman, town councillor, selectman,

and school committee member and moderator. The statement shall clearly indicate that he is a former incumbent thereof if such is the case and, if he is an elected incumbent of an office for which he seeks renomination that he is a candidate for such renomination. If he is a veteran, as defined in section one of chapter thirty-one, the word "veteran" may be included in the eight word statement.

Signatures shall be subject to section seven, and every voter may sign as many nomination papers for each office as there are persons to be nominated therefor or elected thereto, and no more.

A nomination paper shall be valid only in respect to a candidate whose written acceptance is thereon; provided, however, that a candidate for ward or town committee who accepts nomination for such office more than once shall withdraw from all but one such nomination paper or shall be disqualified.

No nomination paper for use in the nomination of candidates to be voted for at state primaries shall contain the name of more than one candidate.

Whoever knowingly subscribes falsely to a statement on a primary nomination paper shall be punished by a fine of not more than fifty dollars.

§46. Nomination Papers; Certification;  
Correction of District Designation;  
Limitation on Candidates.

Every nomination paper of a candidate for a city or town office shall be submitted, on or before five o'clock post meridian of the seventh day preceding the day on which it must be filed, to the registrars of the city or town in which the signers appear to be voters. Every nomination paper of a candidate for state office shall be submitted on or before five o'clock post meridian of the twenty-eighth day preceding the day on which it must be filed with the state secretary to the registrars of the city or town in which the signers appear to be voters. Every nomination paper of a candidate for president at the presidential primaries shall be submitted to said registrars on or before five o'clock post meridian of the fourteenth day before the final date for filing said papers with the state secretary and certification of said papers shall be completed no later than the seventh day before the final day for filing said papers with the state secretary. Nomination papers for candidates for state, ward, and town committees shall be submitted to said registrars on or before five o'clock post meridian on the eleventh day before the final day for filing with the state secretary and certification shall be completed no later than the fourth day before the final day for filing said papers with the state secretary. Each nomination paper shall be marked with the date and time it was submitted and such papers shall be certified in order of submis-

sion. Said registrars shall check each name to be certified by them on the nomination paper and shall forthwith certify thereon the number of signatures so checked which are names of voters both in the city or town and in the district for which the nomination is made, and who are not enrolled in any other party than that whose nomination the candidate seeks, and only names so checked shall be deemed to be names of qualified voters for the purpose of nomination. The registrars shall place next to each name not checked symbols indicating the reason that name was disqualified. The certification of voters shall be signed by a majority of the board of registrars.

The registrars shall inform the candidate submitting such papers if the designation of the district only in which he seeks office is incorrect, and shall give said candidate the opportunity to insert the correct designation on such papers before the signatures are certified. The registrars shall, if the candidate so desires, allow a change of district on the nomination papers in the presence of the candidate whose name appears on the nomination papers, and the registrar and the candidate shall both initial the change of district so made and further shall in writing explain the change of district causing three copies to be made, one of each for the registrar and candidate and one to be attached to the nomination papers. If the correct district designation is not so inserted, the nomination papers shall not be approved. In no case may a correction be made to change the office for which such candidate is nominated.

The provisions of section seven relative to the number of names to be certified and received, and, except as otherwise provided in this section, the provision relative to time of certification shall apply to such papers. For the purpose of certifying the names on primary nomination papers the registrars shall hold meetings on the four Tuesdays next preceding the seventh day before the final day on which such papers are required to be filed with the state secretary, except that for primaries before special elections the meetings shall be held on the two Tuesdays next preceding such date, and except that for presidential primaries, the meetings for certifying papers for candidates for state, ward, and town committees shall be held on the four Tuesdays next preceding the fourth day before the final day for filing said papers with the state secretary, except that the fifth Tuesday shall be substituted for that Tuesday on which any city or town holds its local election.

No person shall be a candidate for nomination for more than one office; but this shall not apply to candidates for membership in political committees.

§48. Nomination Papers; Last Day for Filing; Certificate Prerequisite to Printing Name on Ballot; Change of Party Enrollment.

Nomination papers of candidates to be voted on at presidential primaries except candidates for state, ward and town committees, shall be filed with the state secretary on or before the first



Friday in January preceding the day of the primaries.

Nomination papers of candidates for election to state, ward and town committees at presidential primaries shall be filed with the state secretary on or before the third Tuesday in November of the year preceding said presidential primaries.

All certificates of nomination and nomination papers of candidates for the office of state representative, state senator, executive council, or county office shall be filed with the state secretary on or before the last Tuesday in May of the year in which a state election is to be held. Certificates of nomination or nomination papers for the office of senator in congress, representative in congress, governor, lieutenant governor, attorney general, treasurer and receiver general, state auditor and state secretary, shall be filed on or before the first Tuesday in June of the year in which a state election is to be held. In the case of primaries before special elections, such nomination papers shall be filed on or before the fifth Tuesday preceding the day of the primaries. The state secretary shall forthwith issue to the candidate or other person filing such nomination papers a certificate acknowledging the time and date of the receipt thereof.

There shall not be printed on the ballot at the state primary the name of any person as a candidate for nomination for any office to be filled by all the voters of the commonwealth, or for



representative in congress, governor's councillor, senator in the general court, representative in the general court, district attorney, clerk of court, register of probate and insolvency, register of deeds, county commissioner, sheriff, or county treasurer, unless a certificate from the registrars of voters of the city or town wherein such person has been a registered voter for more than ninety days and that he has been enrolled as a member of the political party whose nomination he seeks on or before the ninetieth day prior to the last day herein provided for filing nomination papers with the state secretary is filed with the state secretary on or before such filing deadline. Said registrars shall issue such a certificate, signed by a majority thereof, forthwith upon request of any such candidate so enrolled or of his authorized representative. Said registrars of voters shall issue such certificate to any person seeking the nomination of a political party, who is a newly registered voter of that city or town enrolled in that political party and who has not been an enrolled member of another political party during the year preceding the last day for filing nomination papers with the state secretary. No such certificate shall be issued to any person who is a candidate for nomination for any such office, if such person has been an enrolled member of another political party during the year prior to the last day for filing nomination papers with the state secretary as provided by this section.

There shall not be printed on the ballot at the state primary the name of any person as a candidate for nomination for any office to be filled by all the voters of the commonwealth, or for councillor, senator, representative to the general court, representative in congress, district attorney, clerk of court, register of probate and insolvency, register of deeds, county commissioner, sheriff, or county treasurer, unless a certificate from the registrars of voters of the city or town wherein such person is a registered voter that he is enrolled as a member of the political party whose nomination he seeks is filed with the state secretary on or before the last day herein provided for filing nomination papers. Said registrars shall issue such a certificate, signed by a majority thereof, forthwith upon request of any such candidate so enrolled or of his authorized representative. No such certificate shall be issued to any person who is a candidate for nomination for any such office, if such person has changed his party enrollment less than one year prior to the last day for filing nomination papers with the state secretary as provided by this section.

There shall not be printed on the ballot at a city or town primary the name of any person as a candidate for nomination for any office to be filled at a city or town election unless such person has become an enrolled member of the political party whose nomination he seeks on or before the ninetyeth day prior to the last day for submitting primary nomination papers to the re-

gistrars of voters prior to said primary.

The name of a candidate for election to any office who is nominated otherwise than by a political party, generally referred to as an "Unenrolled" candidate, shall not be printed on the ballot at a state election, or on the ballot at any city or town election following a city or town primary, unless a certificate from the registrars of voters of the city or town wherein such person is a registered voter, certifying that he is not enrolled as a member of any political party, is filed with the state secretary or city or town clerk on or before the last day herein provided for filing nomination papers. Said registrars shall issue each certificate forthwith upon request of any such candidate who is not a member of a political party or his authorized representative. No such certificate shall be issued to any such candidate who shall have been an enrolled member of any political party ninety days prior to the last day for filing nomination papers as provided by this section.

§54. Provisions Applying To Pre-Primary Conventions.

Beginning in the year nineteen hundred and fifty-four, a political party shall, upon the call of its state committee, but not later than June fifteenth, in a year in which a biennial state election is held, hold a state convention for the purpose of adopting a platform, electing such number of members at large of the state committee as

may be fixed by the convention, nominating presidential electors in those years in which a United States president is to be chosen and endorsing for nomination candidates for offices to be filled by all the voters of the commonwealth, to be voted for at the ensuing state primary, and for such other purposes consistent with law as the convention may determine. Such convention shall consist of delegates chosen by the ward and town committees. The number of delegates shall be one from each ward and town and one additional for every thousand votes or major fraction thereof cast at the preceding biennial state election, in such ward or town, for the respective party's candidate for governor. Each such ward or town committee desiring representation at such convention shall, within fourteen days after a meeting duly called for the purpose of selecting a delegate or delegates, notify the respective city committee, in the case of a city, or the state committee, in the case of a town, but in no case shall such notice be given less than fourteen days prior to the date appointed for the opening of such convention. No vacancy shall be filled for any reason. Nothing herein contained shall affect or diminish the operation of the laws relating to state primaries contained in sections forty-one to fifty-three A, inclusive.

. . .

§54C.

Every certificate of nomination of candidates endorsed for nomination by a state convention shall state that the

nominee has been endorsed for nomination at such convention and shall include such facts as are required by section eight. Every certificate listing candidates at such convention who received at least twenty per cent of the vote of the convention on any ballot shall also include such facts. Such certificates shall be signed, sworn to and filed as required by section five.

Each such candidate shall, within ten days from the day when the convention terminates, file with the state secretary his written acceptance of the nomination, otherwise his name shall not be printed on the ballot as a candidate for the office to which he was nominated, and he may add the eight-word statement authorized by section forty-five. Such candidate may not withdraw such acceptance.

. . .

§54D.

Delegates shall be seated in groups by senatorial districts as determined by the state committee. The convention shall be called to order by the chairman or acting chairman of the state committee, or in the absence of either, then by a person designated in such manner as the rules of the party shall prescribe. The person who calls the convention to order shall preside until the election of a permanent chairman. He shall appoint a temporary secretary to receive the roll of the convention and a monitor from each group who shall receive the credentials of delegates and present them to the temporary secretary.

The convention shall not proceed to the election of a permanent chairman or transact any business until the time fixed for the opening thereof, nor until a majority of the delegates named in the official roll shall be present. It shall then elect from among its delegates a permanent chairman and a permanent secretary, neither of whom shall be an officer of the state committee, and shall complete its organization. It shall make suitable rules for the conduct of its business, the order of which shall follow the purposes of the convention as stated in section fifty-four. The permanent secretary shall keep the records of the convention and transmit the same to the state secretary who shall retain them for a period of one year.

The permanent chairman and permanent secretary shall be chosen upon a call of the official roll. Committees of the convention shall be appointed by the convention, or by the permanent chairman, as the convention may order. When the vote of the convention is taken upon the election, nomination or endorsement for nomination of any candidate, the roll of the delegates shall be called and each delegate when his name is called shall arise in his place and announce his choice, except that when there is only one candidate to be voted for, the roll need not be called, and except also that the monitor of a group, unless a member of the group objects, may announce the vote of such group.

A delegate to a pre-primary convention who corruptly requests or accepts a



gift or gratuity under an agreement or with an understanding that his vote shall be given for any particular candidate or any person who offers such a gift or gratuity with such understanding or agreement shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than thirty days or both.

Mass. Gen. Laws ch. 55A, §2.

Certification of Candidates Qualified for Statewide Elective Office.

On or before the ninth Tuesday before the primary election in any year in which elections are held for statewide elective office the state secretary shall determine and certify to the director and the state treasurer the names and addresses of all candidates for statewide elective office who qualify for the primary ballot and are opposed by one or more candidates who have qualified for the same ballot in the primary election. For purposes of this chapter any candidate for statewide elective office for whom certificates of nominations and nomination papers have been filed in apparent conformity with law shall be considered qualified for the ballot notwithstanding any objections thereto that may be filed and notwithstanding any vacancy that may occur following the filing of such certificates of nomination and nomination papers other than a vacancy caused by withdrawal of a candidate within the time allowed by law. On or before the fifth Tuesday before the state election in any such year the state secretary shall determine and certify to the



director and to the state treasurer the names and addresses of all candidates for statewide elective office who qualify for the state election ballot and are opposed by one or more candidates who have qualified for the state election ballot. For purposes of this chapter any candidate for statewide elective office for whom certificates of nomination and nomination papers have been filed in apparent conformity with law shall be considered qualified for the ballot, as provided with respect to candidates for the primary election, and any such candidates nominated at the primary election shall be considered qualified for the ballot notwithstanding any objections thereto that may be filed and notwithstanding any vacancy that may occur other than a vacancy caused by withdrawal of a candidate within the time allowed by law. The state secretary shall promptly determine and certify to the director and state treasurer the name and address of any candidate that no longer qualifies for the primary or state election ballot or no longer has opposition because of death or withdrawal or ineligibility for office or because objections to certificates of nomination and nomination papers have been sustained or because of a recount or for any other like reason.

NOS. 82-927  
82-936

Supreme Court, U.S.  
FILED

JAN 5 1983

ALEXANDER L. STEVAS  
CLERK

IN THE  
SUPREME COURT OF THE UNITED STATES

October Term, 1982

FREDERICK C. LANGONE,  
MADELINE G. SARNO, VICTOR GRILLO,  
LOUIS FERRETTI, GAIL A. FASANO,  
THE LANGONE FOR LIEUTENANT GOVERNOR  
COMMITTEE, and FRANCIS X. BELLOTTI,

Appellants,

v.

MICHAEL J. CONNOLLY,  
as he is Secretary of the Commonwealth  
of Massachusetts,  
DEMOCRATIC STATE COMMITTEE,  
SAMUEL ROTONDI, JOHN F. KERRY,  
LOIS PINES, and EVELYN MURPHY,

Appellees.

ON APPEAL FROM THE SUPREME JUDICIAL COURT  
FOR THE COMMONWEALTH OF MASSACHUSETTS

APPELLEE DEMOCRATIC STATE COMMITTEE  
OF MASSACHUSETTS' MOTION TO DISMISS

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ON APPEAL FROM THE SUPREME JUDICIAL COURT  
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QUESTIONS PRESENTED

The questions presented by this  
case are the two questions that were  
decided by the Supreme Judicial Court of  
Massachusetts in the ruling below:

1. Whether all candidates who have complied with applicable statutory requirements must appear upon the Democratic state primary ballots, notwithstanding the failure to obtain at least fifteen percent of the vote on any ballot of the Democratic Convention pursuant to Article Six, Section III of the "Charter of the Democratic Party of the Commonwealth" [the "15% Rule"]? 1/

---

1/ Article Six, Section III of the Charter of the Democratic Party for the Commonwealth of Massachusetts (the "15% Rule"), adopted at the party's 1979 Charter Convention, provides for party endorsement of candidates through the mechanism of an election year Endorsing Convention. Endorsements are made by majority vote of the delegates present and voting. However,

2. Whether the decision by the Secretary of the Commonwealth that he will not place upon the Democratic state primary ballots those candidates who failed to obtain at least fifteen percent of the vote on any ballot of the Democratic Convention pursuant to Article Six, Section III of the "Charter of the Democratic Party of the Commonwealth", but

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1/ (continued)

candidates who, on any ballot, receive at least 15% of the votes cast at the Endorsing Convention for the office they seek and who otherwise meet the requirements of M.G.L. c.53, may challenge that endorsement at the primary election. The candidate receiving a plurality of the votes cast at the Democratic Primary becomes the Democratic nominee. M.G.L. c. 53, §2. (The text of Article Six, Section III is attached to this Motion as Appendix A).

otherwise complied with the  
statutory requirements to have  
their names placed upon the  
ballots violated the  
constitutional or statutory  
rights of the voters, the  
candidates, or their  
supporters?

The court below, in Langone et al. v.  
Secretary of the Commonwealth, et  
al., Massachusetts Supreme Judicial  
Court, in an order dated July 6, 1982,  
answered these questions, "no."

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## INTRODUCTION

Appellants Francis X. Bellotti ("appellant Bellotti") (Case No. 82-927) and Frederick C. Langone, Madeline G. Sarno, Victor Grillo, Louis Ferretti, Gail A. Fasano and The Langone for Lieutenant Governor Committee ("the Langone appellants") (Case No. 82-936) have filed Jurisdictional Statements with this Court seeking to appeal from a final Order and Judgment of the Massachusetts Supreme Judicial Court entered on July 6 and 7, 1982. In the alternative, they ask that their Jurisdictional Statements be considered as Petitions for Certiorari.

Pursuant to Rule 16 of the Rules of the Supreme Court of the United States, appellee Democratic State Committee of Massachusetts hereby moves to dismiss both of these appeals and opposes those

Petitions. This case presents no grounds for appeal and does not warrant further argument or briefing. It concerns the peculiarities of the Massachusetts election laws which, absent the "15% Rule", would permit a candidate with little or no support from regular party members to run for office as the party's official nominee, and was correctly decided by the court below in accordance with applicable precedent in this Court. Whatever federal questions it presents are insubstantial, having already been decided by this Court and correctly applied below.

#### OPINION BELOW

As noted by appellants, the opinion of the Supreme Judicial Court of the Commonwealth of Massachusetts supporting the Order and Judgment from which they appeal has not yet been issued by that



court. A decisional Order, however, was entered by the Supreme Judicial Court on July 6, 1982 and a Judgment in accordance with that Order was entered by the Supreme Judicial Court for Suffolk County on July 7, 1982. Both the Order and Judgment are reproduced in the appellants' Jurisdictional Statements.

A unanimous advisory opinion in a related case which discussed many of the issues later litigated in this action, was issued by the Supreme Judicial Court on April 23, 1982. Opinion of the Justices, 385 Mass. 1201 (1982). A copy of that opinion is attached hereto as Appendix B.

#### JURISDICTION

Appellant Bellotti and the Langone appellants are in two very different postures before this Court. Bellotti challenges the ruling of the court below

on one ground only -- that, contrary to the decision of the Supreme Judicial Court, the Massachusetts Democratic Party's "15% Rule" was and is statutorily "preempted" by the provisions of the Massachusetts General Laws governing party primaries. He does not dispute the ruling of the court below that the "15% Rule" did not infringe the Langone appellants' constitutional rights. <sup>2/</sup> The Langone appellants challenge both aspects of the court's ruling.

Because of the present lack of an opinion by the Supreme Judicial Court in this case, appellants speculate as to the jurisdictional basis for these appeals. However, as explained more

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<sup>2/</sup> See Jurisdictional Statement of appellant Bellotti, p. 29, fn. 13.

fully below, it is possible that the decision of the Supreme Judicial Court, on many of the issues sought to be raised by appellants in this Court, rests on adequate and independent state statutory and constitutional grounds. To the extent it does not, it is clear that the federal questions raised by both appellants are insubstantial and were correctly decided by the court below in accordance with this Court's prior decisions upholding the associational rights of political parties and the constitutional validity of reasonable restrictions on ballot access. Thus, no jurisdictional basis for this appeal exists.

In the alternative, appellants have asked that their Jurisdictional Statements be treated as Petitions for Certiorari. For the same reasons as

articulated in support of this Motion to Dismiss, the Democratic State Committee opposes those Petitions.

**CONSTITUTIONAL PROVISIONS  
AND STATUTES INVOLVED**

In addition to the state statutory and federal Constitutional provisions cited by appellants, Articles XVI and XIX of the Declaration of Rights to the Massachusetts Constitution and M.G.L. c.52, §10, and M.G.L. c.53, §38 were also involved in the decision below and may have been dispositive of issues which appellants seek here to appeal. The pertinent text of these state constitutional and statutory provisions is set forth in Appendix C.

**STATEMENT OF THE CASE**

Appellee Democratic State Committee wishes to bring the following additional facts to the Court's attention.

By statute, the winner by a plurality of the Democratic primary becomes the Democratic Party nominee at the general election. M.G.L. c. 53, §2. Also by statute, voting at the Democratic primary is open not only to enrolled party members but also to unenrolled (independent) voters who declare themselves "Democrats" at the polls just before receiving ballots. M.G.L. c. 53, §7. <sup>3/</sup> Voters may cancel or change their party registration at the polling places immediately after voting. M.G.L. c. 53, §38. Thus, it is quite literally possible for a voter to be only a "primary day Democrat."

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<sup>3/</sup> As of February 1980, 39.9% of all registered Massachusetts voters were unenrolled. Opinion of the Justices, 385 Mass. 1201, 1205 fn. 1 (1982).

Candidates seeking to have their names placed on the Democratic primary ballot must satisfy several statutory requirements. The candidate must be an enrolled Democrat, M.G.L. c. 53, §48; file a financial disclosure form with the State Ethics Commission, M.G.L. c. 53, §9; and submit nominating papers signed by at least 10,000 registered voters who can be either Democrats or independents. M.G.L. c. 53, §§44, 46. Thus, as observed by the Supreme Judicial Court, nothing in the statutory scheme would prevent a candidate who lacked the support of a single registered Democrat from being placed on the Democratic primary ballot and, notwithstanding little or no support from the regular party membership, from potentially becoming the Democratic Party candidate in the general

election. Opinion of the Justices,  
385 Mass. 1201, 1205 (1982).

Concerned with the decline of the party's organizational effectiveness and, in particular, with the fact that existing statutory law allowed a candidate who did not share the party's ideals, had no intention of furthering those ideals if elected, and had no party accountability, to run for office as the official Democratic Party nominee, the Democratic Party in 1977 appointed a commission to draft a proposed state party Charter. The Commission held many public meetings across the Commonwealth and, in the spring of 1979, submitted a proposed Charter to a specially convened Charter Convention. The delegates to the Charter Convention were elected at caucuses on March 24, 1979 conducted in



every ward and town in the Commonwealth. All registered Democrats were eligible to take part in those caucuses, and approximately 30,000 party members so participated.

Part of the Charter proposed by the Commission concerned the procedure by which the party would choose its nominees for state-wide office. Following the model so successfully used in Connecticut, the Commission recommended that party nominees for statewide office be selected by a two-pronged procedure involving convention endorsement and the primary election. This procedure was set forth in Article Six, Section III of the proposed Charter. Under Article Six, Section III, an Endorsing Convention, to be held in statewide election years, would, by majority vote, formally

endorse one candidate for each statewide office. However, the convention "endorsement" of a candidate could be challenged at the state party primary by any and all other candidates otherwise qualified under State law who, on any convention ballot, received at least 20% of the vote cast for that office. The party would thus be assured that its ultimate nominee had demonstrated at least a minimal degree of support from the regular party membership in addition to the broad appeal to all voters who consider themselves Democrats which is needed to win the primary election. At the same time, the rights of significant minorities in the party would be protected by their candidates being able to take their case directly to the primary voters through the "challenge"

procedure, thus ensuring an open and democratic choice.

The Charter Convention debated Article Six, Section III - including its proposed "20%" requirement - and, at the November 1979 continuation of the Convention, adopted the overall procedure of convention endorsement and primary selection, but struck a slightly different balance. The requirement that a candidate desiring to run in the primary obtain at least 20% of the vote for the office he sought on any ballot at the Endorsing Convention was reduced to 15% of the vote. The "15% Rule", as it came to be known, was then adopted by a roll-call vote of over two-thirds of the voting delegates. The overall Charter, as amended, was likewise adopted by an over two-thirds roll-call vote.

The Charter Convention intended the Charter - including its "15% Rule" - to take effect as soon as possible. Although the party leadership was initially unsure as to whether certain of the Charter's provisions could take effect without legislative action, the convention delegates voted on the Charter, including Article Six, Section III and its "15% Rule", fully aware that it could take effect without such legislation.

Because of legislation pending in the Massachusetts General Court during the 1981 legislative session which would have amended the State's election laws, the party leadership remained uncertain about the legal effect of the "15% Rule". However, none of that proposed legislation was enacted into law. Thus, since the previous statutory scheme

remained intact, and in light of this Court's decision in Democratic Party v. Wisconsin, 450 U.S. 107 (1981), the Democratic State Committee determined that Article Six, Section III could be implemented immediately. Accordingly, plans went ahead to hold an Endorsing Convention in 1982 pursuant to Article Six, Section III. From the outset of planning for that Endorsing Convention it was clear that the "15% Rule" would be applicable. At a public meeting in Northampton, Massachusetts on November 7, 1981 which adopted the delegate selection rules and convention rules for the planned 1982 Democratic Endorsing Convention, it was publicly announced by the Chairman of the Democratic State Committee that the decision in Democratic Party v. Wisconsin, 450

U.S. 107 (1981) could make Article Six, Section III effective without legislation. The preliminary Call to Convention, mailed by the Democratic State Committee to the Chairpersons of the various Democratic ward and town committees throughout the Commonwealth in December of 1981, accordingly contained a copy of the Charter, including Article Six, Section III and its "15% Rule", without a previous notation that certain of its provisions would require legislation to become effective.

Had appellant Langone been dissatisfied with the "15% Rule", he could have declared himself an "unenrolled" candidate and attempted to qualify for the general election ballot as an independent at any time prior to

February 4, 1982. M.G.L. c. 53, §6.

Langone chose not to do so.

On February 6, 1982, delegates to the 1982 Endorsing Convention were elected at caucuses conducted in every ward and town throughout Massachusetts. Persons registered as Democrats prior to December 31, 1981 were eligible to take part in those February 6th caucuses and approximately 100,000 so participated. The Endorsing Convention was duly held on May 21-22, 1982, and candidates were endorsed for every statewide office. Five of the seven candidates for the Party's nomination for the Lieutenant Governorship received at least 15% of the convention vote on one or more ballots for that office. Only two, appellant Langone and Joel Pressman, did not. Two amendments seeking either to repeal Article Six, Section III or



postpone its effective date until January 1, 1983 were presented, debated and overwhelmingly defeated.

The Democratic primary was duly held on September 14 and the general election on November 2, 1982.

#### SUMMARY OF ARGUMENT

At issue in the court below was a peculiarity in the Massachusetts election laws which allows "independents" to sign party nominating petitions and vote in party primaries, and a rule, democratically adopted by the state Democratic Party in response to that peculiarity, designed to ensure that regular party members had an effective role in the selection of their party's candidate. That party rule, popularly known as the "15% Rule", was designed to fit into the state statutory

scheme for party primaries, and to protect the rights of significant minorities within the party. Plaintiffs appeal from a judgment of the Massachusetts Judicial Court upholding the validity and effect of that Rule.

Appellants' appeals should be dismissed. It is possible that many of the issues raised by them were decided by the court below on independent and adequate state grounds. To the extent they were not, the federal questions which appellants seek to reraise in this Court are insubstantial. The case below turned on a peculiarity of the Massachusetts election laws. No conflict exists between the ruling of the court below and any decision of this or other courts. No novel issues are presented requiring resolution by this

Court. To the contrary, the decision of the court below was firmly in accordance with applicable precedent in this Court and was correctly decided.

Under the first and fourteenth amendments to the United States Constitution and Articles XVI and XIX of the Declaration of Rights to the Massachusetts Constitution, the Massachusetts Democratic Party has a constitutionally protected right of association enforceable against the state. This fundamental right of association empowers the party to adopt and enforce reasonable candidate selection procedures, like the "15% Rule", which, in the democratically ascertained judgment of the party membership, will contribute to the achievement of the party's political objectives.

The Massachusetts statutes which regulate the election process are not exclusive, either by their terms or through the operation of any principles of preemption. While these statutes serve to protect the state's interest in the regularity of the election process, they do not, and constitutionally they cannot, preclude a political party from adopting, by democratic process, reasonable additional rules and requirements to be met by candidates who seek public office under the party's banner. Accordingly, a reading that M.G.L. c. 53, §44 preempts the "15% Rule" would render the statute unconstitutional under both the Massachusetts and United States Constitutions.

The constitutionally protected right of the Massachusetts Democratic

Party to choose its own candidate selection procedures may be abridged by the state only upon a showing of a compelling state interest, and then only by the least restrictive means available. No compelling state interest warranted the invalidation of the "15% Rule," which was democratically adopted by the party to enhance its organizational effectiveness, and which has the demonstrated support of the party membership.

The "15% Rule" did not infringe any constitutionally protected rights of the appellants. No one has a constitutional right to have either his name or the name of his chosen candidate placed on the ballot in a party primary. So long as all candidates have a fair opportunity to compete for the party's nomination on an equal basis, no

constitutional infirmity exists.

Moreover, apart from the Democratic primary, reasonable alternative means of access to the ultimate election ballot existed and were available to appellant Langone if he was dissatisfied with the Democratic Party procedures. Reasonable alternative means of expressing their candidate preference at the final election -- either by "write in" or through support of other candidates -- existed for the voters appellants.

Finally, the "15% Rule" was properly held to have been applicable to the September 14, 1982 primary. The Democratic Party had consistently repeated its intent that the "15% Rule" be implemented as soon as possible. Although the party leadership initially felt that legislation might be necessary to implement the "15% Rule", this

Court's declaration in Democratic Party v. Wisconsin, 450 U.S. 107 (1981), led to a reassessment which was clearly made known in ample time for appellant Langone and his supporters to prepare accordingly.

#### ARGUMENT

- I. THIS CASE CONCERNS ONLY THE VALIDITY AND EFFECT OF THE MASSACHUSETTS DEMOCRATIC PARTY'S "15% RULE" IN THE CONTEXT OF THE MASSACHUSETTS STATE STATUTORY SCHEME FOR PARTY PRIMARIES.

At issue in this case is a narrowly drawn party rule -- democratically adopted by a political party to harmonize the rights of regular party members, significant minorities within the party, and the state statutory scheme for a primary open to "independents" -- which, after full argument and briefing, was upheld by the Massachusetts Supreme Judicial Court.



Contrary to appellants' assertions, the ruling below does not spell the end of the primary system nor signify the triumph of "bossism". It addressed a peculiarity in the Massachusetts election laws which allows "independents" to sign party nominating petitions and vote in party primaries, and upheld the Democratic Party's "15% Rule" -- which was designed to ensure that regular party members had at least a minimal voice in who their party's candidate would be -- in the light of that peculiarity. The "15% Rule" did not and does not conflict with any state statute. Rather, it was and is a reasonable additional requirement designed to ensure that party interests are protected in the primary process. Contrary to appellants' contentions, the issue before the Supreme Judicial Court

was not whether a political party has the absolute right to set minimum ballot access requirements. The court below's ruling does not signify the uncritical acceptance of all such party rules. At issue was solely the "15% Rule", not a "35%" or "50%" or "100%" requirement. Nothing more was decided.

II. WHATEVER FEDERAL QUESTIONS ARE PRESENTED BY THIS APPEAL ARE INSUBSTANTIAL AND WERE CORRECTLY DECIDED BY THE COURT BELOW.

A. Article Six, Section III of the Charter of the Massachusetts Democratic Party was a Lawful Exercise of the Party's Constitutionally Protected Right of Association.

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The Massachusetts Democratic Party's adoption of the "15% Rule", through a democratic process in which party members demonstrated their overwhelming support for the Rule, was a lawful exercise of the party members' constitutionally protected right of association.

The fundamental right of political parties to establish candidate selection procedures has been repeatedly recognized by this Court.

Rivera-Rodriguez v. Popular

Democratic Party, \_\_\_ U.S. \_\_\_, 72

L Ed.2d 628, 637-38 (1982); Democratic

Party v. Wisconsin, 450 U.S. 107,

122-24 (1981); Cousins v. Wigoda, 419

U.S. 477, 491 (1975); and Ray v.

Blair, 343 U.S. 214 (1952). As noted

by the court below in its advisory opinion:

"A determination of who will appear on a general election ballot as a candidate endorsed by an identified political party is a critical decision for that party. The party, therefore, has a substantial interest implicit in its freedom of association to insure that party members have an effective role in that decision."

Opinion of the Justices, 385 Mass.

1201, 1204 (1982).

This Court has previously recognized the constitutional right of a political party to protect its candidate selection process from undue influence by persons who are, at best "election day" party members or who are not party members at all. See Rivera-Rodriguez v. Popular Democratic Party, supra; Democratic Party v. Wisconsin, supra; Cousins v. Wigoda, supra; and Ray v. Blair, supra.

Appellants seek to distinguish the holdings of these cases by contending that they apply only to national parties and national political contests. That contention is simply wrong.

"Although Cousins' holding is limited to conflicts between national party rules and state law, the decision is also relevant in resolving conflicts between state parties and state law. The balancing test employed in Cousins rests on a finding

that the alternate delegates had an associational interest in participating in the party's activities. More the Court's language indicates that the party itself had an associational interest in deciding who could participate in its activities, which was infringed by the lower court's injunction. Indeed, the opinion suggests that the party's right to associate may even protect a more general right of group self-governance. There seems to be no reason to limit protection of these associational interests to national parties or to delegates to national conventions, and nothing in Cousins suggests that the Court's interpretation of the scope of the freedom to associate should not extend to state or local parties".

Developments in the Law: Elections,

88 Harv. L. Rev. 1111, 1210 (1975),

cited with approval in Fahey v.

Darigan, 405 F. Supp. 1386, 1395-96

(D.R.I. 1975). See also Abrams v.

Reno, 452 F. Supp. 1166 (S.D. Fla.

1978) (holding that a state political

party had the constitutionally protected right to endorse a candidate running in that party's primary election, and that a state statute to the contrary was unconstitutional).

Appellants cite Smith v. Allwright, 321 U.S. 649 (1944), for the broad proposition that state political parties may never adopt enforceable rules relating to the eligibility of candidates seeking to participate in their party primaries. Appellants misstate that holding. All Smith holds is that a party may not lawfully exclude persons from its primary on the basis of race or color. It does not hold, and cannot be construed as holding, that state and local political parties have no constitutionally protectible associational interests in who their party-endorsed candidate will be.

Appellants likewise cite a variety of state court holdings, most from the 1930's and all pre-Cousins, for the proposition that state party rules cannot override state election statutes. Once again, appellants misstate those holdings. All of them, with the exception of Love v. Wilcox, 28 S.W.2d 515 (Tex. 1930), involve an explicit conflict between a party rule and a state statute (e.g. an attempt by the party to extend a state filing deadline, to require a filing fee higher than that set by statute, etc.) -- a situation not present here, where the "15% Rule" is a reasonable additional requirement speaking to a concern (the associational rights of the Democratic Party) not addressed by the Statutory scheme. The Wilcox case is inapposite as the court there noted in its decision



that it was not called upon to determine whether a political party had power, beyond statutory control, to prescribe what persons could participate as voters or candidates in its convention or primaries. Id. at 522.

More importantly, none of appellants' cases involve a party rule as critical to the party's associational rights as the "15% Rule" is to the Democratic Party here. In such cases, a state statute in explicit conflict with a reasonable party rule which is at the core of the party's associational interests would be unconstitutional. Abrams v. Reno, 452 F.Supp. 1166, 1170 (S.D. Fla. 1978).

The "15% Rule" admittedly adds a new hurdle for would-be Democratic Party candidates, whereby a place on the

primary ballot must now be earned by obtaining a measure of support from active party members, who are largely responsible for its organizational work, for the development of its platforms and in general for maintaining the party as an effective force in our political system. <sup>4/</sup> This is both a reasonable and lawful precondition to obtaining the right to carry the party's banner. See Ripon Society, Inc. v. National Republican Party, 525 F. 2d. 567 (D.C. Cir. 1975) (en banc), cert. denied, 424 U.S. 933 (1976). Here the means chosen by the party to effect some control over the selection of Democratic

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<sup>4/</sup> Over 100,000 party members participated in the caucuses that selected the 3,500 delegates to the 1982 Endorsing Convention.

Party candidates, the "15% Rule", only bars from the ballot would-be candidates who have proven unable to muster even a minimal degree of support from the active party membership. 5/ Five candidates other than Pressman and appellant Langone obtained sufficient party support to stand before the primary voters as Democratic Party candidates for Lieutenant Governor. It

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5/ When imposed by state statute, such requirements have repeatedly been upheld as reasonable and lawful. See e.g., Tansley v. Grasso, 315 F. Supp. 513 (D. Conn. 1970), in which a three judge court upheld a Connecticut statutory requirement for 20% approval by party delegates at district conventions in order for candidates to qualify for the party's district primary ballot. See also Restivo v. Conservative Party, 391 F. Supp. 813 (S.D.N.Y. 1975); Clark v. Rose, 379 F. Supp. 73 (S.D.N.Y. 1974) (three-judge court), aff'd, 412 F.2d 56 (2nd Cir. 1976).

is, therefore, manifest that the "15% Rule", while serving the legitimate interest of the party in limiting its primary ballot to candidates of demonstrated allegiance, does not impair the right of Democratic primary voters to a broad and representative choice of candidates.

**B. The Court Below Properly Held that the "15% Rule" was a Valid and Binding Addition to the Statutory Requirements of M.G.L. Chapter 53.**

The provisions of M.G.L. c.53 are not by their terms exclusive. They set forth requirements for access to the party primary ballots, but nowhere explicitly state that they are preemptive. Indeed, M.G.L. c.52, §10 gives party State Committees the right to "make rules and regulations, consistent with law, for calling conventions."

It is possible that the court below, construing those statutory provisions, held that, as a matter of state statutory construction, those statutes did not "preempt" the right of a political party to place reasonable additional requirements for candidate eligibility on persons seeking their party's endorsement at the primary. If so, such a holding would be on an independent and adequate non-federal basis, depriving this Court of jurisdiction to review that decision. It is equally likely that the court below, construing those state statutory provisions in the light of the protections that Article XVI and XIX of the Declaration of Rights to the Massachusetts Constitution give the associational rights of political

parties, 6/ held that those statutes were not pre-emptive and that the Democratic Party had the constitutionally protected right to impose the "15% Rule" on candidates seeking to participate in its primary. If so, once again that would constitute an independent and adequate non-federal basis for the decision, not reviewable in this Court.

The only way that the allegedly "pre-emptive" effect of the Massachusetts statutory scheme would properly be before this Court would be if the court below held that the statutes: (1) were facially pre-emptive; (2) did not infringe the Democratic

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6/ Article XVI protects freedom of speech; Article XIX protects the right of assembly.

Party's associational rights as protected by the Massachusetts Constitution; but (3) did violate the Massachusetts Democratic Party's first and fourteenth amendment rights of association. Even if this should be the case, it is clear that this Court should dismiss appellant's appeal because the federal question so raised would be insubstantial -- one already decided by this Court and which was decided by the court below in accordance with applicable Supreme Court precedent.

See Rivera-Rodriguez v. Popular Democratic Party, \_\_\_\_ U.S. \_\_\_\_, 72 L.Ed. 2d 628 (1982); Democratic Party v. Wisconsin, 450 U.S. 107 (1981); Cousins v. Wigoda, 419 U.S. 477 (1975); Ray v. Blair, 343 U.S. 214 (1952).



C. The "15% Rule" Did Not Infringe Any  
of the Langone Appellants'  
Constitutionally Protected Rights.

A candidate has no fundamental constitutional right to run in a party primary and, potentially, to become that party's nominee. Clements v.

Fashing, \_\_\_\_ U.S. \_\_\_\_, 73 L.Ed 2d 508, 516 (1982); Bullock v. Carter, 405 U.S. 134, 142-43 (1972); Walker v. Yucht, 352 F. Supp. 85, 97 (D. Del. 1972) (three-judge court); Developments in the Law: Elections, 88 Harv. L. Rev. 1111, 1176 (1975). Similarly, a voter does not have the constitutional right to expect that a candidate to his liking will be on the ballot. Lubin v. Panish, 415 U.S. 709, 716 (1974); Walker v. Yucht, supra at 92.

Both the state and political parties may constitutionally put reasonable restrictions upon access to

primary ballots and, so long as all candidates are equally subject to those requirements and have an equal opportunity to meet them, no constitutional rights of the candidates or their supporters are infringed.

Clements v. Fashing, \_\_\_ U.S. \_\_\_, 73 L.Ed 2d 508, 516-17 (1982) (inquiry is whether the challenged restriction unfairly or unnecessarily burdens the availability of political opportunity). See generally Developments in the Law: Elections, 88 Harv. L. Rev. 1111, 1176-77 (1975).

The "15% Rule" has, at most, a constitutionally insignificant impact on the Langone appellants' constitutional rights. It does not discriminate against a discrete minority group. It does not involve a classification based on wealth. Nor does it impose a burden

on new or small political parties or independent candidates. Thus, it is not subject to "strict scrutiny", and need only bear a rational relationship to a legitimate party goal. Clements v. Fashing, \_\_\_\_\_ U.S. \_\_\_\_\_, 73 L.Ed. 2d 508, 516-517 (1982); Clough v. Guzzi, 416 F. Supp. 1053, 1066-68 (D. Mass. 1976) (three-judge court); Nader v. Schaffer, 417 F. Supp. 837, 948-49 (D. Conn. 1976) (three-judge court) aff'd 429 U.S. 989 (1976); Walker v. Yucht, 352 F. Supp. 85 (D. Del. 1972) (three-judge court). This it clearly does. 7/

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7/ The "15% Rule", in fact, serves a compelling party interest (that of assuring its members an effective role in the selection of their party's nominee) and is thus constitutionally permissible even under the "strict scrutiny" standard of review. See Storer v. Brown, 415 U.S. 724 (1974).

Candidate qualifications far more restrictive than those imposed by the "15% Rule" have been upheld against constitutional challenge many times, the closest case being Tansley v. Grasso, 315 F. Supp. 513 (D. Conn. 1970) (three-judge court) in which the constitutional validity of Connecticut's statutory requirement that a prospective candidate receive the support of at least twenty percent of the delegate vote in a party convention, on any roll-call vote, in order to qualify to run in the party primary, was unanimously upheld by the court. See also Storer v. Brown, 415 U.S. 724 (1974) holding, inter alia, that a state's requirement that independent candidates gather 325,000 signatures of registered voters in 24 days in order to qualify for the ballot as a presidential or vice

presidential candidate was not unconstitutional; Jenness v. Fortson, 403 U.S. 431 (1971) (state's requirement that independent candidates file a nominating petition signed by at least 5% of the number of registered voters who participated in the last general election for the office in question held valid against constitutional attack); and Rosario v. Rockefeller, 410 U.S. 752 (1973) (cutoff date for enrollment which occurs about eight months before a presidential, and 11 months before a nonpresidential, primary, was not unconstitutionally arbitrary when viewed in light of legitimate state purpose of avoiding disruptive party raiding).

Political parties have interests parallel to those of the states, and reasonable means employed by them in furtherance of those interests which, if

used by the state would be constitutionally permissible, are likewise constitutional. Thus, in Restivo v. Conservative Party, 391 F. Supp. 813 (S.D.N.Y. 1975), and Clark v. Rose, 379 F. Supp. 73 (S.D.N.Y. 1974) (three-judge court), aff'd, 531 F.2d 56 (2nd Cir. 1976), the courts upheld a party rule that required party non-members to secure twenty-five percent of the vote of the party's state committee before being allowed to participate in the primary. Indeed, a political party's regulation of ballot access is accorded far more deference than that of a state. As noted by the court in Ripon Society, Inc. v. National Republican Party, 525 F.2d 567 (D.C. Cir. 1975) (en banc), cert. denied 424 U.S. 933 (1976):

"The [party's] primary purpose is to chart a course for the advancement of the party's ideals and it is in that light that the requirements of equal protection are to be discerned."

525 F.2d at 585, n.58. See also Bode v. National Democratic Party, 452 F.2d 1302 (D.C. Cir. 1971) cert. denied 404 U.S. 1019 (1972); Moritt v. Rockefeller, 346 F. Supp. 34, 38 (S.D.N.Y. 1972) (three-judge court), aff'd 409 U.S. 1020 (1972).

As noted above, five of the seven candidates who submitted their names to the convention for the office of lieutenant governor received sufficient votes to qualify for the primary. Thus, the reasonableness of the "15% Rule", and the minimal nature of its requirements, are manifest.

Finally, when evaluating the Langone appellants' constitutional claims, it is important to remember that



ways other than the Democratic Party nomination exist for a candidate to get his name on the ultimate election ballot. Appellant Langone had the opportunity at any time up until February 4, 1982 to withdraw from the Democratic Party, declare himself an independent candidate, and enlist his supporters in an attempt to secure sufficient signatures on petitions to qualify for the November ballot. M.G.L. c.53, §6. He chose to remain a Democrat. Langone's supporters retained the right to "write in" Langone's name on the November election ballot, and to support other candidates who reflected their political views.

At root, under the guise of alleged "constitutional violations", the Langone appellants are asking this Court to order the Democratic Party potentially

to endorse a candidate who has not satisfied the party rules and has now chosen to challenge the wishes of a majority of its regular party members. If there are constitutional rights severely at risk, they are those of the regular Democratic Party members who, should this Court invalidate the "15% Rule", may potentially be represented in a general election by a candidate who has no significant support in the active party membership. Langone chose to stay in the Democratic Party rather than become an independent. Having made that choice, he should be required to abide by the "15% Rule."

D. Langone Was Not Prejudicially Mislead as to the Applicability of the "15% Rule" to the September 14, 1982 Democratic Party Primary.

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In his Jurisdictional Statement, appellant Langone claims that, even if

the "15% Rule" is held to be valid and enforceable, it nonetheless should not have been applied to exclude him from the September 14, 1982 Democratic primary ballot. In support of this claim, he alleges that he was prejudicially mislead as to whether or not the "15% Rule" would be applied last September. The answer to this claim is simple; the Democratic State Committee's December, 1981 mailing of the preliminary "Call to Convention" included a full copy of the Charter, including Article Six, Section III, and plainly stated that it would be in effect at the upcoming Endorsing Convention. All interested candidates participated in the drafting of the Convention's rules and were informed of the Chairman's remarks about the applicability of the "15% Rule" in early

November 1981. Moreover, each candidate who wanted his name placed before that Convention, including Langone, was separately mailed a form inquiring as to whether he supported the Charter and the platform. If he had wished, at any time prior to February 4, 1982, Langone could have sought access to the November ballot as an independent. He chose to remain a Democrat, actively participated in the Endorsing Convention, and was unable to garner the minimally necessary support.

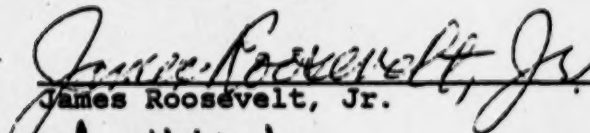
Finally, the Democratic Party, speaking through its 1982 Endorsing Convention, voted to apply the "15% Rule" at the September 14, 1982 primary. That choice was upheld by the Massachusetts Supreme Judicial Court, and that ruling should not be disturbed by this Court.

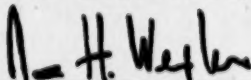
CONCLUSION

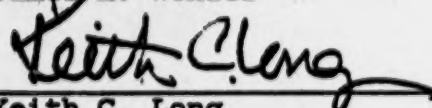
For the foregoing reasons, appellee Democratic State Committee of Massachusetts respectfully requests that the appellants' appeals be dismissed or, in the alternative, their Petitions denied.

THE DEMOCRATIC STATE COMMITTEE OF  
MASSACHUSETTS

By its attorneys,

  
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Dated: January 3, 1983

## APPENDIX A

### CHARTER OF THE DEMOCRATIC PARTY OF THE COMMONWEALTH OF MASSACHUSETTS

#### ARTICLE SIX, SECTION III. ENDORSING CONVENTION

There shall be a State Convention in even-numbered years for the purpose of endorsing candidates for statewide offices in those years in which such office is to be filled. Endorsements for statewide office of enrolled Democrats nominated at the Convention shall be by majority vote of the delegates present and voting, with the proviso that any nominee who receives at least 15 percent of the Convention vote on any ballot for a particular office may challenge the Convention endorsement in a State Primary Election.

## OPINION OF THE JUSTICES.

## OPINION OF THE JUSTICES TO THE GOVERNOR.

*Constitutional Law, Freedom of association, Political party, Primary, Opinions of the Justices. Elections, Political party, Primary. Primary. Supreme Judicial Court, Opinions of the Justices.*

The Justices asked to be excused from answering a question propounded to them by the Governor inquiring only about the legal effect of a current statute in light of the Democratic party charter, and not about the Governor's power or authority to take certain action. [ ]

Proposed legislation which would allow a candidate to be placed on the Democratic State primary ballot by nomination papers without having received fifteen percent of the vote at the party convention would abridge the constitutional rights of the Democratic party and its members to associate by allowing candidates to be placed on the primary ballot in contravention of the party's charter. [ ]

On April 23, 1982, the Justices submitted the following answers to questions propounded to them by the Governor.

To His Excellency, the Governor of the Commonwealth of Massachusetts:

The Justices of the Supreme Judicial Court respectfully respond to the questions set forth in the Governor's request dated April 5, 1982, and transmitted to the Justices on April 6, 1982.

General Laws c. 53, § 44, as amended through St. 1981, c. 278, § 1, provides in part that "[t]he nomination of candidates for nomination at State primaries shall be by nomination papers." There is pending before the Governor for his approval House Bill No. 5852, which would amend c. 53,



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*Opinion of the Justices.*

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§ 44, by inserting after the first sentence the following sentence: "Notwithstanding the charter, rule or by-law of a political party, any candidate, who is enrolled in such political party, submitting nomination papers subject to the provisions of this chapter shall be a candidate for nomination at the state primary." Article Six, Section III, of the charter of the Democratic party of the Commonwealth of Massachusetts, provides "There shall be a State Convention in even-numbered years for the purpose of endorsing candidates for statewide offices in those years in which such office is to be filled. Endorsements for statewide office of enrolled Democrats nominated at the Convention shall be by majority vote of the delegates present and voting, with the proviso that any nominee who receives at least 15 percent of the Convention vote on any ballot for a particular office may challenge the Convention endorsement in a State Primary Election."

Stating his uncertainty "as to the necessity or constitutionality of H. 5852 if enacted into law," the Governor requests, pursuant to the authority contained in Pt. II, c. 3, art. 2, of the Massachusetts Constitution, as amended by art. 85 of the Articles of Amendment, the opinion of this court on the following questions of law:

"1. Does the fifteen percent rule in the Democratic Charter supersede the current provisions of General Law, Chapter 53, section 44, or can a candidate be placed on the Democratic State Primary Ballot by nomination papers without having received fifteen percent of the vote at the party convention?"

"2. Would enactment of H. 5852 allow a candidate to be placed on the Democratic State Primary Ballot by nomination papers without having received fifteen percent of the vote at the party convention?"

The constitutional provision which empowers us to answer questions propounded by the Governor, the Council, and the Legislature, restricts our authority to "important

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Opinion of the Justices.

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questions of law" and to "solemn occasions." Part II, c. 1, § 1, art. 2 of the Massachusetts Constitution. To preserve the principle of separation of powers, fundamental in our system of government, we are bound strictly to observe these constitutional limitations. *Answer of the Justices*, 382 Mass. 914, 916-917 (1973). As the Justices have advised, "By a solemn occasion the Constitution means some serious and unusual exigency. It has been held to be such an exigency when the Governor or either branch of the Legislature, having some action in view, has serious doubts as to their power and authority to take such action, under the Constitution, or under existing statutes." *Answer of the Justices*, 373 Mass. 867, 871 (1977), quoting from *Answer of the Justices*, 148 Mass. 623, 625-626 (1889).

Because question number 1 inquires only about the legal effect of the current statute in light of the Democratic party charter, and not about the Governor's authority to take action, there is no solemn occasion authorizing us to answer. *Opinion of the Justices*, Mass. Adv. Sh. (1981) 1361, 1381-1382. It may well be that the Justices' answer to question number 1 would help the Governor determine the "necessity" of House No. 5852 in view of the present statute, a concern expressed in the request. However, whether the bill is necessary raises the question whether it is wise or expedient for the Governor to approve the bill. The Justices are not empowered to answer questions bearing on the wisdom or expediency of proposed legislation. *Answer of the Justices*, 319 Mass. 731, 734 (1946). *Opinion of the Justices*, 314 Mass. 767, 771-772 (1943). Not having the authority to answer question number 1, we respectfully request that we be excused from answering it.

In the context of the Governor's expressed uncertainty as to the constitutionality of House No. 5852, we interpret question number 2 to inquire whether, if House No. 5852 were approved, G. L. c. 53, § 44, as thereby amended, would abridge the constitutional rights of the Democratic party and its members to associate by allowing candidates to be placed on the Democratic State primary ballot in con-

travention of the party's charter. The Governor has a present duty to act on House No. 5852. Part II, c. 1, § 1, art. 2, of the Massachusetts Constitution. This duty, and the Governor's expressed doubts about whether House No. 5852 would be constitutional if he approved it, present a solemn occasion requiring our answer to the second question. See *Opinion of the Justices*, 314 Mass. 767, 772 (1943).

"The [Democratic Party of the Commonwealth] and its adherents enjoy a constitutionally protected right of political association. 'There can no longer be any doubt that freedom to associate with others for the common advancement of political beliefs and ideas is a form of "orderly group activity" protected by the First and Fourteenth Amendments. . . . The right to associate with the political party of one's choice is an integral part of this basic constitutional freedom.' *Kusper v. Pontikes*, 414 U.S. 51, 58-57 (1973). 'And of course this freedom protected against federal encroachment by the First Amendment is entitled under the Fourteenth Amendment to the same protection from infringement by the States.' *Williams v. Rhodes*, 393 U.S. 23, 30-31 (1968). Moreover, '[a]ny interference with the freedom of a party is simultaneously an interference with the freedom of its adherents.' *Sweezy v. New Hampshire*, 354 U.S. 234, 280 (1957); see *NAACP v. Button*, 371 U.S. 415, 431 (1963)." *Cousins v. Wigoda*, 419 U.S. 477, 487-488 (1975). "Freedom of association would prove an empty guarantee if associations could not limit control over their decisions to those who share the interests and persuasions that underlie the association's being." *Democratic Party of U.S. v. Wisconsin*, 450 U.S. 107, 122 n.22 (1981), quoting L. Tribe, *American Constitutional Law* 791 (1978). A determination of who will appear on a general election ballot as the candidate endorsed by an identified political party is a critical decision for that party. The party, therefore, has a substantial interest, implicit in its freedom of association, to ensure that party members have an effective role in that decision. *Democratic Party of U.S. v. Wisconsin*, *supra*.

Within the Commonwealth, the winner by a plurality of a party primary becomes that party's candidate for statewide office in the general election. G. L. c. 53, § 2. Voting in party primaries is limited to enrolled party members and unenrolled voters who enroll at the polls just before receiving ballots. G. L. c. 53, § 37. Apart from Article Six, section III, of the State Democratic party charter, in order to be placed on a party's primary election ballot, a candidate for statewide office must be an enrolled member of that party, G. L. c. 53, § 48, and submit nominating papers signed by at least 10,000 registered voters, c. 53, § 44, who may be enrolled in that party or unenrolled. G. L. c. 53, § 46. Therefore, apart from Article Six, section III, of the State Democratic party charter, a candidate for statewide election could be placed on the Democratic party ballot and win the primary, thus becoming entitled to be placed on the general election ballot as the Democratic party candidate, with little or no support from the regular party membership.<sup>1</sup>

The State Democratic party charter, Article Six, Section III, proviso that any nominee who receives at least 15% of the vote at the State convention may challenge the convention endorsement, by negative implication adds to the statutory requirement of nomination papers for placement on the primary ballot the further requirement that a candidate must receive at least fifteen percent of the convention vote. This has the double effect of limiting the number of candidates on the primary ballot, thereby eliminating the confusion that may result from too many candidates, and of limiting the candidates to those with significant party support, thereby giving the party members an effective role in choosing the party's candidate in the general election. The State has been held to have a compelling interest in limiting the number of candidates in order to prevent voter confusion. *American Party of Texas v. White*, 415 U.S. 767,

<sup>1</sup> As of February, 1980, 38.9% of all registered voters in the Commonwealth were unenrolled. *Seatruck v. Secretary of the Commonwealth*, Mass. Adv. Sh. (1981) 93, 97.

780-781 (1974). *Storer v. Brown*, 415 U.S. 724, 732 (1974). A political party has a parallel interest.

If House No. 5852 were approved, G. L. c. 53, § 44, as thereby amended, would appear to override the charter requirement of 15% of the convention vote for placement on the primary ballot and, together with c. 53, § 46, would eliminate the Democratic party's control of who its candidate in the general election would be. This would substantially infringe the right of freedom of association of the Democratic party and its members, and therefore, to pass constitutional muster, it must serve a compelling State interest, *Sears v. Secretary of the Commonwealth*, 389 Mass. 392, 397 (1975), and do so with as little infringement on constitutional rights as possible. See *Riddell v. National Democratic Party*, 508 F.2d 770, 776-778 (5th Cir. 1975). We must apply "strict scrutiny" to its justification and operation. *Bachrach v. Secretary of the Commonwealth*, Mass. Adv. Sh. (1981) 93, 101.

The Commonwealth unquestionably has a compelling interest in the overall regularity of the election process, including limitation of the number of candidates on the ballot so as to avoid voter confusion and ensuring that the candidates whose names appear on the ballot have significant community support. *American Party of Texas v. White*, 415 U.S. 767, 782 (1974). This applies to the conduct of primary elections, *Kusper v. Pontikes*, 414 U.S. 51 (1973), *Rosario v. Rockefeller*, 410 U.S. 752 (1973), which are an important part of the procedure by which the ultimate office holder is chosen. *Sears v. Secretary of the Commonwealth*, *supra* at 398. These interests are served by the requirement that each candidate for statewide office obtain the signatures of at least 10,000 registered voters on nomination papers, G. L. c. 53, § 44, but they are not served by the elimination of a 15% convention vote requirement for placement on the primary ballot. Elimination of the Democratic party charter requirement could only increase the number of candidates on the primary ballot, with a resulting increased potential for voter confusion.



We assume that House No. 5852 was designed to promote the integrity of the election process. Nevertheless, the Commonwealth's compelling interest in the integrity of the election process does not constitutionally justify elimination of party control over who the party's candidate in the general election will be. This view finds support in *Democratic Party of U.S. v. Wisconsin*, *supra*. In that case, the United States Supreme Court struck down a State statute that compelled the party to seat delegates at its national convention who were bound by the statute to vote on the first ballot with the results of a primary election in which any registered voter could participate regardless of party affiliation. This was contrary to the national party rules. Wisconsin impermissibly attempted to override the national party's attempt to limit "those who could participate in the processes leading to the selection of delegates to their National Convention." *Id.* at 122. General Laws c. 53, § 44, as it would be amended by House No. 5852, would attempt to override the State Democratic party's effort to ensure that regular party members have a substantial voice in the selection of its candidates for statewide office, and that, at least in conjunction with §§ 44, 46, and 37 of G. L. c. 53, is impermissible. If the law of the Commonwealth were to require that nomination papers be signed only by regular members of the party, contrary to c. 53, § 46, or that only regular members of the party may vote in the primary, contrary to c. 53, § 37, then c. 53, § 44, as it would be amended by House No. 5852, would be less intrusive on a political party's constitutional rights. However, we express no opinion on whether it would be sufficiently less intrusive to be constitutionally sound, since that is not the question before us, nor need we consider whether any proviso of the Constitution of the Commonwealth might prohibit the proposed enactment.

We answer question number 2, as interpreted by us above, as follows: If House No. 5852 were approved, G. L. c. 53, § 44, as thereby amended, would abridge the constitutional rights of the Democratic party and its members

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*Opinion of the Justices.*

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to associate by allowing candidates to be placed on the Democratic State primary ballot in contravention of the party's charter.

The foregoing opinion is submitted by the Chief Justice and the Associate Justices subscribing hereto on the 23rd day of April, 1982.

**EDWARD F. HENNESSEY**

**HERBERT P. WILKINS**

**PAUL J. LIACOS**

**RUTH L. ABRAMS**

**JOSEPH R. NOLAN**

**NEIL L. LYNCH**

**FRANCIS P. O'CONNOR**



## APPENDIX C

**Art. XVI. Liberty of the press; free speech**

**ART. XVI.** The liberty of the press is essential to the security of freedom in a state: it ought not, therefore, to be restrained in this commonwealth. The right of free speech shall not be abridged.

**Art. XIX. Right of people to assemble peaceably, to instruct representatives and to petition legislature**

**ART. XIX.** The people have a right, in an orderly and peaceable manner, to assemble to consult upon the common good; give instructions to their representatives, and to request of the legislative body, by the way of addresses, petitions, or remonstrances, redress of the wrongs done them, and of the grievances they suffer.

M.G.L.A.

52 §9

§10. Rules and regulations

A state, city or town committee may make rules and regulations consistent with law, for its proceedings, and a state committee may make rules and regulations, consistent with law, for calling conventions.

Added by St.1938, c. 346, §1.

§38. Party designation of voters and eligibility to vote under party enrolments; certificate

No voter enrolled under this section or section thirty-seven shall be allowed to receive the ballot of any political party except that with which he is so enrolled; but, except as otherwise provided by said section thirty-seven, a voter may, except within a period beginning at ten o'clock in the evening of the twenty-eighth day prior to a state or presidential primary or the twentieth day prior to a special state primary or city or town primary and ending with the day of such primary, establish, change or cancel his enrolment by forwarding to the board of registrars of voters a certificate signed by such voter under the pains and penalties of perjury, requesting to have his enrolment established with a party, changed to another party, or cancelled, or by appearing in person before a member of said board and requesting in writing that his enrolment be so established, changed or cancelled. The processing of an absentee ballot to be used at a primary shall also be deemed to establish the enrolment of a voter in a political party, effective as of the date of said processing. Except as otherwise provided in section twelve of chapter four, such enrolment, change or cancellation shall take effect at the expiration of twenty-eight days for a state and presidential primary or twenty

days for a special state primary or city or town primary following the receipt by said board of such certificate, or such appearance, as the case may be. No voter enrolled as a member of one political party shall be allowed to receive the ballot of any other political party, upon a claim by him of erroneous enrolment, except upon a certificate of such error from the registrars, which shall be presented to the presiding officer of the primary and shall be attached to, and considered a part of the voting list and returned and preserved therewith; but the political party enrolment of a voter shall not preclude him from receiving at a city or town primary the ballot of any municipal party, though in no one primary shall he receive more than one party ballot.

At primaries the city or town clerk shall make available within the polling place, certificates to enable a voter to establish, change or cancel his party enrolment, substantially as follows:

Date.....

Name..... Address.....  
(print)

I hereby request that my enrolment be  
(changed) as.....,  
(cancelled)  
(established)

in accordance with section thirty-eight of chapter fifty-three of the General Laws.

Signed under the penalties  
of perjury:

.....  
Signature

On the same day as he casts his ballot, the voter may transmit the certificate to the city or town clerk, who shall transmit them as soon as possible after the primary to the board of registrars, to be retained in their custody. The party enrolment of each voter shall be recorded in the current annual register of voters, and whenever a voter shall establish, cancel or change his enrolment it shall likewise be so recorded.

Said board shall forthwith notify each voter transmitting any such certificate that the same has been received and that his enrolment has been established, changed or cancelled in accordance with his request or that said certificate is void and of no effect, if such be the case.

Amended by St.1938, c. 299; St.1943, c. 334, §15; St.1945, c. 237, §3; St.1959, c. 74; St.1963, c. 113, §2; St.1967, c. 238, §2; St.1969, c. 119, §2; St.1971, c. 920, §5; St.1972, c. 115; St.1974, c. 79, §§1, 2.

NO. 82-927

Office-Supreme Court, U.S.  
FILED

MAR 24 1983

ALEXANDER L. STEVAS,  
CLERK

IN THE  
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

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FRANCIS X. BELLOTTI,  
ATTORNEY GENERAL, et al.,

Appellants,

v.

MICHAEL J. CONNOLLY, et al.,

Appellees.

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MEMORANDUM OF THE APPELLEE  
DEMOCRATIC STATE COMMITTEE IN  
RESPONSE TO THE SUPPLEMENTAL  
JURISDICTIONAL STATEMENT OR  
PETITION FOR CERTIORARI  
OF FRANCIS X. BELLOTTI

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INTRODUCTION

On December 3, 1982, the Attorney General of the Commonwealth of Massachusetts ("the Attorney General") filed a Jurisdictional Statement seeking a review of a final judgment entered by the Massachusetts Supreme

Judicial Court on July 6, 1982. At the time the Attorney General filed his Jurisdictional Statement, the Supreme Judicial Court had not yet issued a written opinion. On December 6, 1982, a Jurisdictional Statement was filed in the related case of Langone, et al.

v. Michael J. Connolly, et al., No. 82-936. On January 4, 1983, Appellee Democratic State Committee of Massachusetts ("the Committee") filed a Motion to Dismiss in both matters. On January 5, 1983, Appellee Michael Joseph Connolly ("Connolly") also filed a Motion to Dismiss in both matters.

On February 16, 1983, the Supreme Judicial Court issued its opinion in the matter below. On March 17, 1983, the Attorney General filed with this Court a Supplemental Jurisdictional Statement or Petition for Certiorari. This Memorandum is filed in response to certain points which were raised in

that Supplemental Jurisdictional Statement.

### ARGUMENT

- I. The Supplemental Jurisdictional Statement or Petition for Certiorari of the Attorney General Overstates the Breadth of the Opinion of the Supreme Judicial Court.
- 

The Attorney General's Supplemental Jurisdictional Statement states that:

"The Supreme Judicial Court has expanded [Democratic Party of the United States v. Wisconsin, 450 U.S. 107 (1981)] beyond the question of seating delegates in national nominating conventions. In the Supreme Judicial Court's view, all differences between state law and state party rules must be resolved in favor of the party rule."  
[17] 1/

This statement does not accurately reflect the findings of the Supreme

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- 1/ The bracketed page references (e.g. [17]) are to the Attorney General's Supplemental Jurisdictional Statement or Petition For Certiorari.

Judicial Court; and distorts the position of that Court beyond recognition. At issue before the Supreme Judicial Court was the limited question of whether M.G.L. c. 53, §44 precluded the implementation of the "15% Rule" and whether implementation of the "15% Rule" interfered with the legislative intent in establishing a primary system. 2/ The Supreme Judicial Court found that not only did M.G.L. c. 53, §44 not preclude the

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2/ The two questions before the Supreme Judicial Court were:

1. Whether all candidates who have complied with applicable statutory requirements must appear upon the Democratic state primary ballots, notwithstanding the failure to obtain at least fifteen percent of the vote on any ballot of the Democratic Convention pursuant to Article Six, Section III of the "Charter of the Democratic Party of the Commonwealth".

(continued)

implementation of the 15% Rule, but  
that:

"[T]he 15% rule does not defeat the legislative purpose in adopting a primary system. We need not consider at what point the legislative purpose would be defeated by a different party rule requiring a higher percentage of delegate support." [A26]

Thus, it simply is not true that the Court ruled that all political party rules which conflict with state

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2/ (continued)

2. Whether the decision by the Secretary of the Commonwealth that he will not place upon the Democratic state primary ballots those candidates who failed to obtain at least fifteen percent of the vote on any ballot of the Democratic Convention pursuant to Article Six, Section III of the "Charter of the Democratic Party of the Commonwealth", but otherwise complied with the statutory requirements to have their names placed upon the ballots violated the constitutional or statutory rights of the voters, the candidates, or their supporters?



statutes must be decided in favor of the party rule. Rather, the Court limited its decision to the narrow question of the validity of the "15% Rule", and that question only.

II. The Failure to Implement the "15% Rule" In Connection With The Primary Would Render the Rule Meaningless.

The Attorney General takes the position that if the 15% Rule was not implemented as it was by Connolly, the Democratic Party would still be free to adopt the 15% Rule and impose the Rule as it so chose. The Attorney General states:

"The party is free to adopt the rule and to enforce the rule in any manner it chooses. For example, it can refuse to endorse or recognize candidates that receive less than 15% of the convention vote." [21]

That statement is wrong. Under Massachusetts law the winner of the Democratic primary is the candidate of the Democratic party. M.G.L. c.53, §2.

By law, that person, and no other, will be the bearer of the Democratic Party banner in the general election. Without Connolly's implementation, the "15% Rule" would have been meaningless.

The purpose of the "15% Rule" is to ensure not only that all of the candidates in the Democratic Party primary have demonstrated some minimal support among the regular and active members of the party, but that the same is true of the Democratic candidate in the general election. This is a goal which is not only that of that Party but that of the State as well. If the Democratic candidate is not really a Democrat, the state's interest in stable existing parties is defeated. Tansley v. Grasso, 315 F.Supp. 513, 517 (D. Conn. 1970).

III. The "15% Rule" is Necessary to  
Protect the Associational Rights  
of the Democratic Party

In Massachusetts, on primary day  
an independent voter can declare  
himself a Democrat, vote in the primary  
and then, immediately after depositing  
his ballot, declare himself an  
"independent" once again. M.G.L. c.53,  
§38. In its opinion, the Supreme  
Judicial Court recognized that:

"[S]uch affiliation demonstrates  
neither commitment to, nor  
acceptance of, the political,  
social, and economic philosophies  
and programs for which the party  
has organized. '[A] political  
party has a legitimate -- indeed,  
compelling -- interest in ensuring  
that its selection process  
accurately reflects the collective  
voice of those who, in some  
meaningful sense, are affiliated  
with it. Freedom of association  
would prove an empty guarantee if  
associations could not limit  
control over their decisions to  
those who share the interests and  
persuasions that underlie the  
association's being.'" (emphasis  
in original) [A.22].

The Attorney General states in  
response:

"There is no basis in law or fact for limiting the constitutional rights of political association based upon the duration of the association. [23].

That argument ignores those cases which recognize the right of a party to ensure that those participating in a party decision share the aims and interests of the party. See Ray v. Blair, 343 U.S. 214 (1952) (upholding the constitutionality of a party requirement that candidates for its nomination as Presidential Electors pledge themselves to vote for the party's Presidential and Vice-Presidential nominees, since such a requirement served to protect the party "from intrusion by those with adverse political principles." 343 U.S. at 221-22); Rosario v. Rockefeller, 410 U.S. 752 (1973) (cutoff date for enrollment, which occurs about eight months before a presidential, and 11 months before nonpresidential,

primary, was not unconstitutionally arbitrary when viewed in light of legitimate state purpose of avoiding disruptive party raiding); Restivo v. Conservative Party, 391 F.Supp. 813 (S.D.N.Y. 1973); and Clark v. Rose, 379 F.Supp. 73 (S.D.N.Y. 1974) (three judge court) aff'd. 531 F.2d. 56 (2d Cir. 1976), where the courts upheld a party rule that required party non-members to secure 25% of the vote of the party's state committee before being allowed to participate in the party primary.

The first and foremost purpose of a political party is to chart a direction for the party and its ideals. It is the party and not the state which has primary responsibility to protect the party's interest. So long as the party's restrictions on candidate selection are reasonable, the state should not, and cannot,

interfere. See Sears v. Secretary  
of the Commonwealth, 369 Mass. 392  
(1975).

IV. The Implementation of the "15% Rule" is Inconsistent With the Concept of Bossism.

The Attorney General argues that the Massachusetts primary system, open to independent voters, is intended to increase voter participation and to eliminate political bossism and implies that the "15% Rule" means a return to smoke-filled rooms. It is important to note what the Supreme Judicial Court said on this point:

"Popular participation in the candidate selection process is assured by G.L. c. 53, §44, requiring nomination papers signed by at least 10,000 registered voters, and by c. 53, §37, which provides that primary votes may be cast by persons who are unenrolled until they go to the polls. This broad citizen participation is not negated by application of the 15% rule. The fact that five candidates for selection as the Democratic party's candidate for Lieutenant Governor received sufficient delegate support to satisfy the party charter

requirement warrants the inference that the selection process was not dominated by party bosses."  
[A.25-26]

- V. The "15% Rule" is an Attempt by the Democratic State Party to Provide Some Minimal Protection to the Associational Rights of its Members.
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The fact that five candidates were able to satisfy the 15% Rule undercuts the Attorney General's fear that the Rule would interfere with the purpose and effect of an open primary. The 15% Rule is, as the Supreme Judicial Court found, a proper method of protecting the associational rights which have been recognized in this Court in Rivera-Rodriguez v. Popular Democratic Party, \_\_\_ U.S. \_\_\_, 72 L.Ed 2d 626 (1982); Democratic Party v. Wisconsin, 450 U.S. 107 (1981) and Cousins v. Wigoda, 419 U.S. 477 (1975).

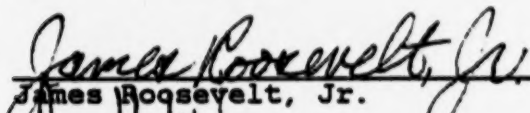


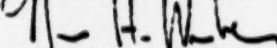
CONCLUSION

For the foregoing reasons and the reasons previously stated in the Motion to Dismiss of Appellee Democratic State Committee of Massachusetts, Appellant Attorney General's Appeal should be dismissed and his Petition for Certiorari denied.

DEMOCRATIC STATE COMMITTEE

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